NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C

S. HRG. 99-230

THE USE OF COMPUTERS TO TRANSMIT MATERIAL INCITING CRIME

HEARING

BEFORE THE

SUBCOMMITTEE ON
SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE USE OF COMPUTERS TO TRANSMIT MATERIAL THAT INCITES CRIME AND CONSTITUTES INTERSTATE TRANSMISSION OF IMPLICITLY OBSCENE MATTER

JUNE 11, 1985

Serial No. J-99-31

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

50-512 O WASHINGTON : 1985

S521-4.

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky

JOSEPH R. BIDEN, JR., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

DENNIS W. SHEDD, *Chief Counsel and Staff Director*
DIANA L. WATERMAN, *General Counsel*
DEBORAH G. BERNSTEIN, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON SECURITY AND TERRORISM

JEREMIAH DENTON, Alabama, *Chairman*

ORRIN G. HATCH, Utah
JOHN P. EAST, North Carolina
MITCH McCONNELL, Kentucky

PATRICK J. LEAHY, Vermont
DENNIS DECONCINI, Arizona

JOEL S. LISKER, *Chief Counsel and Staff Director*
FRAN WERMUTH, *Chief Clerk*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page

Denton, Hon. Jeremiah, a U.S. Senator from the State of Alabama, chairman, Subcommittee on Security and Terrorism 1
McConnell, Hon. Mitch, a U.S. Senator from the State of Kentucky 29

CHRONOLOGICAL LIST OF WITNESSES

Trible, Hon. Paul S., Jr., a U.S. Senator from the State of Virginia 4
Toensing, Hon. Victoria, Deputy Assistant Attorney General, Criminal Division, Department of Justice 25
Lanning, Kenneth V., supervisory special agent, Behavioral Science Unit, Federal Bureau of Investigation Academy, Quantico, VA 39
Smith, Hon. Jack D., general counsel, Federal Communications Commission 65

ALPHABETICAL LIST AND MATERIAL SUBMITTED

Lanning, Kenneth V.:
Testimony 39
Prepared statement 48
Attachments:
A—"X-Rated Computers," article from the Genesis magazine 59
B—"A Proposal for a Computer Bulletin Board," article from the NAMBLA bulletin, December 1983 62
Responses of Hon. William H. Webster to questions submitted by Senator Paul S. Trible, Jr 64
Smith, Jack D.:
Testimony 65
Prepared statement 68
Letters to:
Hon. Strom Thurmond, July 19, 1985 74
Hon. Jeremiah Denton, August 2, 1985 76
Symms, Hon. Steven D.: Prepared statement 2
Toensing, Hon. Victoria:
Testimony 25
Prepared statement 35
Letter to Hon. Jeremiah Denton in response to a followup question, August 1, 1985 38
Trible, Hon. Paul S., Jr.:
Testimony 4
Letters to:
Hon. William French Smith, Attorney General of the United States, August 3, 1984 6
Hon. Mark S. Fowler, Chairman, Federal Communications Commission, August 3, 1984 7
Letters from:
Victoria Toensing, Deputy Assistant Attorney General, U.S. Department of Justice, October 3, 1984 8
Bruce E. Fein, general counsel, Federal Communications Commission, August 21, 1984 11
S. 1305, a bill to amend title 18, United States Code, to establish criminal penalties for the transmission by computer of obscene matter, or by computer or other means, of matter pertaining to the sexual exploitation of children, and for other purposes 13
Introductory remarks, from the Congressional Record, June 17, 1985 .. 18

Page

Trible, Hon. Paul S., Jr.—Continued
S. 1305, a bill to amend title 18, United States Code, to establish criminal penalties for the transmission by computer of obscene matter, or by computer or other means, of matter pertaining to the sexual exploitation of children, and for other purposes—Continued
Introductory remarks, from the Congressional Record, June 17, 1985.. 18

THE USE OF COMPUTERS TO TRANSMIT MATERIAL INCITING CRIME

TUESDAY, JUNE 11, 1985

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met at 10:15 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Jeremiah Denton (chairman of the subcommittee) presiding.

Present: Senator McConnell.

Staff present: Richard D. Holcomb, general counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. Good morning, ladies and gentlemen. The hearing will come to order.

The subcommittee is meeting today to receive testimony on the use of computers to transmit material that incites crime and constitutes interstate transmission of implicitly obscene matter. Specifically, the hearing will address the exchange, among child molesters, of information relating to their victims by way of computer networks that utilize interstate telephone lines.

As chairman of the Security and Terrorism Subcommittee of the Judiciary Committee, it is my lot to have jurisdiction over the FBI, which in turn has interest in and jurisdiction over this kind of a matter.

The witnesses include my distinguished colleague from Virginia, the Honorable Paul S. Trible, Jr.; Mr. Kenneth F. Lanning, supervisory special agent for the Federal Bureau of Investigation; the Honorable Victoria Toensing, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; and the Honorable Jack D. Smith, general counsel for the Federal Communication Commission. Before calling on the first witness, I would like to summarize the overall issue under consideration today.

The issue of child sexual abuse and exploitation has exploded into public view during the past several years. One need only to read the newspapers or watch television news to realize that child sexual abuse is a problem of immense proportions. The National Center for Missing and Exploited Children projects that on a national basis one out of three minor girls and one out of every seven minor boys will be sexually abused. The problem of child sexual

abuse and exploitation is compounded if the child molesters use computers to communicate their exploits to like-minded criminals. Often such communication would engender additional child abuse or exploitation.

According to a February 28, 1984, article in the San Antonio Express News, a 57-year-old man from the Baltimore suburb of Catonsville, who was convicted of molesting 11 children since 1969, had a computer printout with the names, addresses, and birth dates of two of his latest victims. In Chicago a 28-year-old man charged with molesting six children filed in a home computer the names, addresses, and sexual activities of 165 youngsters, including references to photos of the victims.

The article further told of a 42-year-old Los Angeles man, convicted of conspiracy to produce child pornography, who was found to have thousands of pornographic items indexed on a computer. Finally, the article cited the potential of pedophiles using telephones and communicating with each other by computers.

The tendency of those and like-minded criminals to chronicle their exploits appears to be because of the peculiar social situation of pedophiles. According to some experts, the need for pedophiles to communicate among themselves is motivated partly by a need to validate, justify, and rationalize their behavior.

If pedophiles do transmit information about their victims by way of interstate telephone lines, as some experts allege, this certainly would be morally repugnant. But there is a question about whether it would be illegal as laws are presently written.

That is whether section 223 of the Communications Act, which prohibits making any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent by means of telephone, or the Federal Obscenity Statute—18 U.S.C. 1462—which prohibits the interstate transportation by common carrier of, among other things, any obscene, lewd, lascivious or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character, apply to transmissions by computers over telephone lines.

I think the basic question in terms of legality would evolve from the fact that the transmission itself may have a form which is not obscene. And yet the effect of the transmission would not only be obscene, but also tragic respecting its consequences.

Today's hearing will help determine whether pedophiles communicate interstate and what if any prohibitions are applicable to their distorted activities. If no existing prohibitions are applicable, then it is hoped that the hearing will help bring about a legislative response to the apparent deficiency in our current law.

Before we call our first witness, I have a prepared statement by Senator Symms to place in the record at this point.

[The following statement was submitted for the record:]

PREPARED STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

IN SUPPORT OF S. 1305, A BILL TO PROHIBIT THE TRANSMISSION BY COMPUTER OF OBSCENE MATTER OR MATTER PERTAINING TO THE SEXUAL EXPLOITATION OF CHILDREN

Mr. President, I rise in support of S. 1305, Senator Trible's bill to prohibit the use of computers to transmit pornographic material and particularly material pertaining to the sexual exploitation of children. Investigators have compiled a consider-

able body of evidence showing that pedophiles now are using computers to communicate with one another and catalog information about their victims. Unfortunately, these deplorable abuses of modern communications technology are not proscribed by current Federal law, according to officials at the Department of Justice and the Federal Communications Commission.

This legislation would bring Federal obscenity and indecency laws up to date with advances in communications technology. The existing prohibition on the interstate transportation of obscene material would be extended to apply to interstate computer transmissions. The bill also provides penalties for the production and distribution of materials relating to child molestation and child pornography. In addition, pornographers who collect child porn could no longer contact one another in writing or by computer. Our obscenity laws must be expanded in this manner if Congress is to fulfill its responsibility to protect the Nation's youth from criminal activity, including sexual abuse, when that activity falls within the purview of Federal law enforcement or regulatory agencies.

Earlier this month, Senator Denton's Subcommittee on Security and Terrorism held hearings on the subject of child abuse and the use of computers by pedophiles. One of the witnesses, Special Agent Kenneth Lanning of the Behavioral Science Unit at the Federal Bureau of Investigation, gave a moving description of the trauma suffered by thousands of children who become the new victims of pedophiles each year. I urge my colleagues' attention to the following portion of his testimony:

"Discussions and research on pornography often focus on the effects on the viewer rather than on the effects on the child subject. The latter is particularly crucial in evaluating the harm of child pornography.

"Children used in pornography are desensitized and conditioned to respond as sexual objects. They are frequently ashamed of and/or embarrassed about their portrayal in such material. They must deal with the permanency, longevity and circulation of such a record of their sexual abuse. Some types of sexual activity can be repressed and hidden from public knowledge; child victims can fantasize that some day the activity will be over and they can make a fresh start. But there is no denying or hiding from a sexually explicitly photograph or video tape. The child in a photograph or video tape is young forever, and therefore the material can be used over and over for years. Some children have even committed crimes in attempts to retrieve or destroy the permanent records of their molestation."

Americans of every political stripe would agree that we as a nation should act to prevent child sexual abuse and keep our children from suffering the kinds of emotional and psychological damage described by Agent Lanning. Senator Trible's bill is a necessary step in that direction, and I urge its expeditious approval.

Senator DENTON. I look forward to hearing the testimony of our distinguished witnesses and call upon our first one today, my distinguished friend and colleague from Virginia, Senator Paul Trible.

Senator TRIBLE. Thank you, Mr. Chairman.

Senator DENTON. Senator Trible has been concerned about this problem since his election to the Senate in 1982. Last year Senator Trible was instrumental in obtaining certain legislation prohibiting obscene or indecent communications made for commercial purposes to anyone under 18 years of age.

It was also last year that Senator Trible brought to my attention the problem on which today's hearing will focus. To alleviate the problem, Senator Trible plans to introduce the Computer Pornography and Child Exploitation Prevention Act of 1985, a bill which I have joined as an original cosponsor. I would like to commend him for his leadership in this area.

I welcome you to today's hearing and look forward to receiving your testimony. Of course, your complete written statement will be placed in the hearing record. Because of time restraints, you may wish to summarize your testimony.

STATEMENT OF HON. PAUL S. TRIBLE, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator TRIBLE. Thank you. Mr. Chairman, I have a brief statement. And with your indulgence, I would propose to read this.

Mr. Chairman, the problem of child molesters and pornographers using computers to assist in their crimes is quite serious, and it deserves the immediate attention of the Congress. I want to commend you for your leadership. I want to commend you for convening this oversight hearing, and I look forward to working with you in the days ahead.

The push by child molesters and pornographers into the computer field is a disturbing event. It has serious implications for the interrelated problems of child molestation, child pornography, and missing children. And it is yet another example of the resiliency of America's pornography industry.

It should surprise no one that computers are being used for these purposes. Over the years pornographers have taken full advantage of emerging technologies in the communications field.

We have seen the pornography industry offer sexually explicit phone messages. Last year Congress spoke to the issue of obscene and indecent cable programming.

In most of these cases Congress has extended Federal obscenity and indecency laws to cover new technologies. Today it appears we must act again.

Computers have immense potential for pornographers and child molesters alike. Computer use is becoming ever more widespread. Computers afford their users secrecy. Their use to transmit offensive material is apparently not proscribed by existing Federal law.

It already is apparent that computer "sex talk" services are operating in the United States. These seem to be patterned after the Dial-a-Porn services that Congress has fought, except that the ensuing conversations are written rather than spoken.

The computer also seems to become a preferred means of communication among child molesters. Officials of the FBI's Behavioral Science Unit have told a Senate subcommittee that pedophiles are using home and office computers to store and retrieve information about their victims and about their child pornography collections. They are also using computers to communicate with one another and to locate other pedophiles.

The use of computers by pedophiles and pornographers poses a serious threat to our children and our society. The Federal Government has a compelling interest in proscribing such activities when they take place in interstate or foreign commerce. And yet, Mr. Chairman, these practices do not appear to be proscribed by existing Federal law.

Last year I contacted the Department of Justice and the Federal Communications Commission to determine whether present Federal law proscribes these activities. Neither agency was certain that obscence transmissions by computer are now prohibited. Both doubted that transmissions that were not themselves obscene, such as the names and addresses of child abuse victims, could be prosecuted.

Mr. Chairman, I ask unanimous consent that copies of this correspondence with the FCC and the Department of Justice be inserted in the record at this time.

Senator DENTON. Without objection it will be so ordered.

[The following letters were submitted for the record:]

United States Senate

WASHINGTON, D.C. 20510

August 3, 1984

Honorable William French Smith
Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530

Dear Bill:

I am writing to determine whether the existing prohibition on obscene and indecent telephone calls applies to transmissions made by use of a computer.

As you know, the Communications Act as amended prohibits making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent, by means of telephone. As a result of last year's dial-a-porn legislation, it also explicitly proscribes obscene or indecent communications made for commercial purposes to anyone under 18.

However, it is not readily clear whether these prohibitions apply to transmissions of the same nature that are made by use of a computer. Many computer systems make use of telephone lines, for example, without employing the desk top telephone itself. Thus, I would ask that you clarify the phrase by means of telephone, as contained in 47 U.S.C. 223, in the following ways:

1. Do the prohibitions contained in Sec. 223 apply only when use is made of the common, desk top telephone; or does the phrase by means of telephone have a broader interpretation, one, for example, that covers transmissions made by computer over telephone lines?

2. Do the Sec. 223 prohibitions apply if the telephone itself is used in conjunction with a computer modem?

3. Do the Sec. 223 prohibitions apply if the computer is capable of directly accessing the telephone lines, and the transmission therefore does not require use of the desk top telephone at all?

The potential for harm resulting from computer transmissions of obscene or otherwise unacceptable material is enormous. Already, law enforcement officials have reported cases in which child molesters kept meticulous computer records of the names, addresses and telephone numbers of their victims. The prospect of this information being exchanged by pedophiles through computer networks is despicable and unacceptable.

I am deeply concerned about this situation, and I look forward to receiving your opinion on the above questions as soon as possible.

Sincerely,

Paul Trible

PT:dly

United States Senate

WASHINGTON, D.C. 20510

August 3, 1984

Honorable Mark S. Fowler
Chairman, Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Fowler:

I am writing to determine whether the existing prohibition on obscene and indecent telephone calls applies to transmissions made by use of a computer.

As you know, the Communications Act as amended prohibits making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent, by means of telephone. As a result of last year's dial-a-porn legislation, it also explicitly proscribes obscene or indecent communications made for commercial purposes to anyone under 18.

However, it is not readily clear whether these prohibitions apply to transmissions of the same nature that are made by use of a computer. Many computer systems make use of telephone lines, for example, without employing the desk top telephone itself. Thus, I would ask that you clarify the phrase by means of telephone, as contained in 47 U.S.C. 223, in the following ways:

1. Do the prohibitions contained in Sec. 223 apply only when use is made of the common, desk top telephone; or does the phrase by means of telephone have a broader interpretation, one, for example, that covers transmissions made by computer over telephone lines?

2. Do the Sec. 223 prohibitions apply if the telephone itself is used in conjunction with a computer modem?

3. Do the Sec. 223 prohibitions apply if the computer is capable of directly accessing the telephone lines, and the transmission therefore does not require use of the desk top telephone at all?

The potential for harm resulting from computer transmissions of obscene or otherwise unacceptable material is enormous. Already, law enforcement officials have reported cases in which child molesters kept meticulous computer records of the names, addresses and telephone numbers of their victims. The prospect of this information being exchanged by pedophiles through computer networks is despicable and unacceptable.

I am deeply concerned about this situation, and I look forward to receiving your opinion on the above questions as soon as possible.

Sincerely,

Paul Trible

PT:dly

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 3-

Honorable Paul Trible
United States Senate
Washington, D.C. 20510

Dear Senator Trible:

This is in further response to your August 3, 1984, letter to the Attorney General asking whether 47 U.S.C. 223, as recently amended, applies to the transmission of obscene material by computer through telephone hook-up.

You inquired whether the statute reaches communications between computers. While it clearly covers telephone calls as such, neither the legislative history nor case law sheds any light on the question of whether the statute covers the transmission of information directly from computer to computer. In this area technological advancements have far outstripped legal developments. Although it seems reasonable that section 223 should apply to such conduct, assuming the material transmitted is obscene or indecent, we are unable to provide a definitive answer to this issue at this time.

However, an argument can be made that another statute, 18 U.S.C. 1462, covers transmissions between computers over telephone lines. Section 1462 prohibits the interstate transportation by "common carrier" of, inter alia, "any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character."

An issue under this section is whether transmission by "common carrier" includes transmission by telephone lines. The District of Columbia Circuit has stated that the essential characteristic of a common carrier is its quasi-public character, which arises out of an undertaking to carry for all people indifferently. National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir. 1976). This definition would appear to cover telephone companies, which are also clearly covered by the definition of "communication common carrier" as set forth in 47 U.S.C. 153(h), i.e., "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio." The Supreme Court has specifically noted that the definition contained in section 153(h) includes telephone companies. United States v. RCA, 358 U.S. 334, 348-349 (1959); Federal Communications Commission v. Sanders Bros. Radio Station, 309 U.S. 470, 474 (1940).

Another question which arises in connection with 18 U.S.C. 1462 is whether telephone transmissions are "matter" as used in that section. We have found no relevant case law, and a review of the legislative history of the statute and its various amendments disclosed nothing decisive. Only a 1950 amendment, which added phonograph recordings, sheds any light. This amendment was prompted by a Supreme Court decision, United States v. Alpers, 338 U.S. 680 (1950), which held that obscene

phonograph records are prohibited "matter" within the meaning of section 1462.

The Court stated, 338 U.S. at 683-684:

> The obvious purpose of the legislation under consideration was to prevent the channels of interstate commerce from being used to disseminate any matter that, in its essential nature, communicates obscene, lewd, lascivious or filthy ideas . . . . This is a comprehensive statute, which should not be constricted by a mechanical rule of construction.

Four Justices, however, disagreed with this conclusion.

Congress, noting the difference of opinion among the Justices as to whether the term "matter" was broad enough to include phonograph records, and desiring to clarify the issue, amended the statute to include phonograph records. It should be stressed that the reason for the amendment was not to add to the statute, but, rather, to clear up any ambiguity from the dissent in Alpers. 1/ See 1950 U.S. Code Cong. Service, pp. 2438 et seq.

It can therefore be argued that Alpers supports the proposition that obscene telephone transmissions are included within the meaning of "matter" as used in section 1462. Just as in the case of phonograph recordings, the fact that Congress has not yet chosen to specify such transmissions does not mean that they are excluded from coverage under the statute. As the Court stated in Alpers, Congress intended by this statute to proscribe generally the dissemination of obscene material. Including telephone transmissions would therefore be a reasonable application of the statute. The counter-argument is that Congress provided specifically for obscene "telephone" calls in 47 U.S.C. 223, and federal law is limited by what is provided in that section.

We have also considered whether the transmission of this material would be covered by a third statute, 18 U.S.C. 1465, which prohibits the interstate transportation, for the purpose of sale or distribution, of obscene material, including, inter alia, any "picture, film, . . . electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character." However, the legislative history suggests rather strongly that this statute was enacted to cover private carriage rather than use of a common carrier. H.R. Rep. No. 690, June 1, 1955, p. 2. During debate, Congressman Kenneth B. Keating of New York stated that this legislation was intended to fill a "serious loophole" in the law which permitted carriage of obscene material "by private automobiles and trucks." Congressional Record, June 7, 1955, p. A4050. Therefore, if telephone companies are common carriers, it would appear that this section does not apply. Moreover, the section is limited to transportation for sale or distribution.

Additionally, you expressed concern that pedophiles would exchange names, addresses and telephone numbers of their victims by computer telephone hook-up. Section 223, title 47 U.S.C., is, in essence, limited to the interstate communication of obscene or indecent material, and such computerized lists would not appear to fall within its scope. Moreover, as you noted,

1/ The Court in Alpers noted that Congress had amended the statute in 1920 to include motion picture films but took the view that Congress did not intend this addition to imply that if obscene matter was not specifically denominated it was outside the prohibition of the statute or that only visual obscene matter was within the prohibition of the statute.

communications covered by recently-enacted subsection (b) must be for a commercial purpose.

In summary, a definitive response to the question of whether the interstate transmission of obscene material between computers over telephone lines violates 47 U.S.C. 223 or 18 U.S.C. 1462 will have to await further development of case law. At this time, we can only say that the use of telephone lines to transmit information or material which is per se neither "obscene" nor "indecent," such as names, addresses and telephone numbers, is not conduct proscribed by the language of either of these statutes and thus would appear not to be prohibited by current Federal law.

We hope that this information will be of assistance to you.

Sincerely,

STEPHEN S. TROTT
Assistant Attorney General
Criminal Division

By:

Victoria Toensing

VICTORIA TOENSING
Deputy Assistant
Attorney General
Criminal Division

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

August 21, 1984

IN REPLY REFER TO:

Honorable Paul S. Trible
United States Senate
Washington, D.C. 20510

Dear Senator Trible:

Chairman Fowler has requested that I respond to your recent correspondence, in which you inquired whether the phrase "by means of telephone," contained in 47 U.S.C. § 223, applies to transmissions made by use of a computer. Apparently, your inquiry was instigated by the discovery that pedophiles have been compiling, by means of computers, informative data on their victims, and you are concerned that the possibility exists that such information may be exchanged through computer networks which utilize telephone lines.

While we believe that Section 223 would probably apply to the use of telephone lines by computers, whether in conjunction with a computer modem or with a desk top telephone, it does not appear that Section 223 applies to the transmission of messages which are not in themselves obscene or indecent. Section 223(a), in relevant part, makes it a crime to make "any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent." Exchanges of data concerning solely the names, addresses and telephone numbers of victims of child molesters would not seem to fall within the offense defined by Section 223(a). Section 223(b) is plainly inapplicable to telephonic transmissions between computers because the gravaman of the offense under Section 223(b) is the making of an obscene or indecent communication to a minor.

I hope this is responsive to your inquiry. If there is any further way in which I or my staff can be of assistance to you in this matter, please do not hesitate to contact me.

Sincerely yours,

Bruce E. Fein

Bruce E. Fein
General Counsel

Senator TRIBLE. As you know, Mr. Chairman, I will introduce legislation extending Federal law to apply to computer transmissions of this sort. And I want to thank you for joining me as an original cosponsor of that measure.

This legislation would explicitly proscribe interstate computer transmissions that are obscene. It would prohibit any printed or computer-transmitted statement whose purpose is to facilitate the sexual abuse or sexually explicit depiction of a child. And it would proscribe printed or computer-transmitted statements aimed at producing or exchanging child pornography.

This would allow for punishment of child molesters who attempt to contact one another by computer or in writing if their goal is to encourage a criminal act. It would also prohibit pedophiles from exchanging children's names, addresses, and descriptions if their intent was to facilitate the sexual abuse of those children.

Also, pedophiles and others could not contact one another by computer or in writing for purposes of producing, selling, buying, or trading child pornography. And finally, computer sex talk services that are obscene would be prohibited from operating in interstate or foreign commerce.

These would be important steps in preventing the dissemination of obscenity by computer. They would also help curtail an activity that might well contribute to the sexual abuse of our children.

Again, I want to commend you, Mr. Chairman, for convening this oversight hearing. I look forward to reviewing the testimony of the FBI, the Department of Justice, and the FCC. I look forward to working with you to tackle this problem.

[Text of S. 1305, along with Senator Trible's introductory remarks, follows:]

99TH CONGRESS
1ST SESSION

S. 1305

To amend title 18, United States Code, to establish criminal penalties for the transmission by computer of obscene matter, or by computer or other means, of matter pertaining to the sexual exploitation of children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17 (legislative day, JUNE 3), 1985

Mr. TRIBLE (for himself and Mr. DENTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend title 18, United States Code, to establish criminal penalties for the transmission by computer of obscene matter, or by computer or other means, of matter pertaining to the sexual exploitation of children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1985".

SEC. 2. Section 1462 of title 18, United States Code, is amended by—

(1) inserting after subsection (c) the following:

"(d) any obscene, lewd, lascivious, or filthy writing, description, picture, or other matter entered, stored, or transmitted by or in a computer; or

"Whoever knowingly owns, offers, provides, or operates any computer program or service having reasonable cause to believe that the computer program or computer service is being used to transmit in interstate or foreign commerce any matter the carriage of which is herein made unlawful; or"; and

(2) inserting at the end thereof the following:

"For purposes of this section—

"(1) the term 'computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device;

"(2) the term 'computer program' means an instruction or statement or a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system;

"(3) the term 'computer service' includes computer time, data processing, and storage functions; and

"(4) the term 'computer system' means a set of related connected or unconnected computers, computer equipment, devices, and software.".

SEC. 3. (a) Section 2251 of title 18, United States Code, is amended—

(1) in subsection (a) by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(2) in subsection (b) by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(3) by redesignating subsection (c) as subsection (d); and

(4) by inserting after subsection (b) the following new subsection:

"(c) Any person who knowingly enters into or transmits by means of computer, or makes, prints, publishes, or reproduces by other means, or knowingly causes or allows to be entered into or transmitted by means of computer, or made, printed, published, or reproduced by other means—

"(1) any notice, statement or advertisement; or

"(2) any minors' name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information,

for purposes of facilitating, encouraging, offering, or soliciting sexually explicit conduct of or with any minor, or the visual depiction of such conduct, shall be punished as provided in

subsection (d) of this section, if such person knows or has reason to know that such notice, statement, advertisement, or descriptive or identifying information will be transported in interstate or foreign commerce or mailed, or if such information has actually been transported in interstate or foreign commerce or mailed.".

SEC. 4. Section 2252 of title 18, United States Code, is amended—

(1) in subsection (a) by striking out "subsection (b)" and inserting in lieu thereof "subsection (c)";

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection:

"(b) Any person who knowingly enters into or transmits by means of computer, or makes, prints, publishes, or reproduces by other means, or knowingly causes or allows to be entered into or transmitted by means of computer, or made, printed, published, or reproduced by other means any notice, statement, or advertisement to buy, sell, receive, exchange, or disseminate any visual depiction, if—

"(1) the producing of such visual depiction involves the use of a minor engaging in sexual explicit conduct; and

"(2) such visual depiction is of such conduct;

shall be punished as provided under subsection (c), of this section, if such person knows or has reason to know that such notice, statement, or advertisement will be transported in interstate or foreign commerce or mailed, or if such notice, statement, or advertisement has actually been transported in interstate or foreign commerce or mailed.".

SEC. 5. Section 2255 of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) 'computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility directly related to or operating in conjunction with such device.".

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, MONDAY, JUNE 17, 1985 No. 80

Senate

By Mr. TRIBLE (for himself and Mr. DENTON):

S. 1305. A bill to amend title 18, United States Code, to establish criminal penalties for the transmission by computer of obscene matter, or by computer or by other means, of matter pertaining to the sexual exploitation of children, and for other purposes; to the Committee on the Judiciary.

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION ACT

Mr. TRIBLE. Mr. President, I am introducing legislation today to address a foreboding development: The use of computers by child molesters and pornographers to transmit prurient material. I am pleased that the distinguished chairman of the Security and Terrorism Subcommittee [Senator DENTON] has joined me as an original cosponsor of this bill.

This legislation is designed to deter and punish two insidious uses of computers. The first is the use of computers by pedophiles to communicate with one another and to catalog information about their victims. The second is the offering of so-called sex talk computer services similar to the dial-a-porn programs which have sprung up around the country.

It should surprise no one that computers are being used in this manner. Over the years, the pornography industry has taken full advantage of new technologies in the communications field.

We have seen the pornography industry offer sexually explicit phone messages. Last year Congress spoke to the issue of obscene and indecent cable programming.

Congress has repeatedly had to revise Federal obscenity and indecency laws to ensure that they kept pace with technological developments in communications. Today, we must do so again.

Computers offer a tremendous boon to pornographers and child molesters alike. Their use in homes and businesses is increasing. They afford their users great secrecy. And their use to transmit offensive material is apparently not proscribed by existing Federal law.

Computer sex talk services are now operating in the United States. These are patterned after the dial-a-porn services which Congress has fought for so long, except that the ensuing conversations are written rather than spoken.

The computer also seems to have become a preferred means of communications among child molesters. Officials of the FBI's behavioral science unit told Senator DENTON's Security and Terrorism Subcommittee last week that pedophiles are using home and office computers to store and retrieve information about their victims and about their child pornography collections. They are also using computers to communicate with one another and to locate other pedophiles.

The January 1984 issue of the FBI's Law Enforcement Bulletin detailed two such cases. In one, a computer network listed children by sex, race, hair, and eye color, type of sexual act performed, and other particulars on a mailing list that was hundreds of feet long. The list reportedly contained names from six different countries.

The FBI Bulletin also reports that a child molester had cataloged information into his computer about sexual activity with more than 400 children. He also used his computer to index information on his child pornography collection so that he could locate photographs on specific sexual acts.

In addition, I was recently contacted by the Commonwealth's attorney's office in Virginia Beach, VA, about a similar case. The Commonwealth's attorney there has charged an individual who is a computer programmer with several child pornography offenses. During the course of the investigation, authorities seized a computer printout of a mailing list indicating that the accused had contacts with individuals in 33 States and 7 foreign countries.

Mr. President, I ask unanimous consent that a copy of the Commonwealth's attorney's correspondence be inserted in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE COMMONWEALTH'S ATTORNEY, CITY OF VIRGINIA BEACH,
Virginia Beach, VA, June 5, 1985.

Hon. PAUL TRIBLE,
U.S. Senator,
Washington, DC.

DEAR PAUL: In view of your interest in the use of computers by child pornographers, I think it appropriate that I acquaint you with a case currently pending here in the City of Virginia Beach.

In October of 1984, investigators of the Juvenile Exploitation Squad of the Virginia Beach Police Department and a Special Agent of the United States Postal Inspection Service began an undercover operation targeted at one Ronald C. Wagener. This operation culminated in the arrest of Mr. Wagener approximately three weeks ago on three felony charges of distributing obscene material depicting juveniles, and the execution of search warrants at his home and place of business.

Mr. Wagener is a computer programmer and systems analyst by profession and made a number of statements to the undercover officer to the effect that his mailing list was kept on a computer disk with the use of a data encryption program. In executing the search warrant on his home, Virginia Beach Police Officers seized fourteen video cassette recorders of various formats, video cameras, editing equipment, mixing boards, color processors and other associated video production equipment. In addition, the following is a partial inventory of the pornographic items seized in connection with the search warrant: 206 eight millimeter films, 34 Bata format video tapes, 74 VHS format video tapes, 25 U-Matic video tapes, 27 compact format video tapes, 10 one-inch commercial quality Scotch video tapes, 377 still photographs and 63 slides.

Although the bulk of these items depict sexual activity between adults and various animals, sadism between adults, bondage, and master-slave relationships, we have, however, identified approximately thirty video tapes and several dozen still photographs and slides which depict sexual activity between adults and juveniles of both sexes between the ages of six and fifteen years.

We also seized a computer print-out which appears to be at least a partial copy of Mr. Wagener's mailing list showing that he had contacts with individuals in at least thirty-three states and seven foreign countries. At this point, we do not know whether or not the print-out constitutes the complete mailing list as without Mr. Wagener's cooperation, we cannot break the encryption program he used to code his mailing list on the computer disk.

For your information, we expect to be presenting additional indictments against Mr. Wagener involving child pornography to the July meeting of the Virginia Beach Grand Jury, and I will be happy to keep you and your staff posted as to the progress of the case.

If this office can be of assistance to you in regard to this matter, please do not hesitate to contact me.

Very truly yours,
ROBERT J. HUMPHREYS,
Chief Deputy Commonwealth's Attorney.

Mr. TRIBLE. Mr. President, the use of computers to deal in child pornography is extremely alarming. So too is the prospect that pedophiles are exchanging information of their victims. It is particularly worrisome when the molester knows the name and address of the child, and can exchange this information by the secretive means of computer transmission. This worsens the risk that an abused child will become the target of another pedophile.

Likewise, the operation of so-called sex talk computer services is extremely dangerous. The increasing use of computers means that more and more people will have access to these services. It also means that more and more children might try to take advantage of them.

The use of computers by pedophiles and pornographers has no place in a nation which cherishes its children. And yet this practice does not appear to be prohibited by existing Federal law.

Last year, I contacted the Department of Justice and the Federal Communications Commission to determine whether present Federal law proscribes these activities. Neither was certain that obscene transmissions by computer are now illegal. Both doubted that transmissions that were not themselves obscene—such as the names and addresses of child abuse victims could be prosecuted. Officials from the Justice Department and the

FCC reiterated those doubts in their subcommittee testimony last week.

Mr. President, I ask unanimous consent that copies of my original inquiries and the responses by the FCC and the Justice Department be inserted in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, August 3, 1984.

WILLIAM FRENCH SMITH,
Attorney General of the United States,
U.S. Department of Justice,
Washington, DC.

DEAR BILL: I am writing to determine whether the existing prohibition on obscene and indecent telephone calls applies to transmissions made by use of a computer.

As you know, the Communications Act as amended prohibits making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent, by means of telephone. As a result of last year's dial-a-porn legislation, it also explicitly procscribes obscene or indecent communications made for commercial purposes to anyone under 18.

However, it is not readily clear whether these prohibitions apply to transmissions of the same nature that are made by use of a computer. Many computer systems make use of telephone lines. Thus, I would ask that you clarify the phrase by means of telephone, as contained in 47 U.S.C. 223, in the following ways:

1. Do the prohibitions contained in Sec. 223 apply only when use is made of the common, desk top telephone; or does the phrase by means of telephone have a broader interpretation, one, for example, that covers transmissions made by computer over telephone lines?

2. Do the Sec. 223 prohibitions apply if the telephone itself is used in conjunction with a computer modem?

3. Do the Sec. 223 prohibitions apply if the computer is capable of directly accessing the telephone lines, and the transmission therefore does not require use of the desk top telephone at all?

The potential for harm resulting from computer transmissions of obscene or otherwise unacceptable material is enormous. Already, law enforcement officials have reported cases in which child molesters kept meticulous computer records of the names, addresses and telephone numbers of their victims. The prospect of this information being exchanged by pedophiles through computer networks is despicable and unacceptable.

I am deeply concerned about this situation, and I look forward to receiving your opinion on the above questions as soon as possible.

Sincerely,

PAUL TRIBLE.

UNITED STATES SENATE,
Washington, DC, August 3, 1984.

Hon. MARK S. FOWLER,
Chairman, Federal Communications Commission,
1919 M Street, N.W.,
Washington, DC.

DEAR MR. FOWLER: I am writing to determine whether the existing prohibition on obscene and indecent telephone calls applies to transmissions made by use of a computer.

As you know, the Communications Act as amended prohibits making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent, by means of telephone. As a result of last year's dial-a-porn legislation, it also explicitly proscribes obscene or indecent communications made for commercial purposes to anyone under 18.

However, it is not readily clear whether these prohibitions apply to transmissions of the same nature that are made by use of a computer. Many computer systems make use of telephone lines, for example, without employing the desk top telephone itself. Thus, I would ask that you clarify the phrase by means of telephone, as contained in 47 U.S.C. 223, in the following ways:

1. Do the prohibitions contained in Sec. 223 apply only when use is made of the common, desk top telephone; or does the phrase by means of telephone have a broader interpretation, one, for example, that covers transmissions made by computer over telephone lines?

2. Do the Sec. 223 prohibitions apply if the telephone itself is used in conjunction with a computer modem?

3. Do the Sec. 223 prohibitions apply if the computer is capable of directly accessing the telephone lines, and the transmission therefore does not require use of the desk top telephone at all?

The potential for harm resulting from computer transmissions of obscene or otherwise unacceptable material is enormous. Already, law enforcement officials have reported cases in which child molesters kept meticulous computer records of the names, addresses and telephone numbers of their victims. The prospect of this information being exchanged by pedophiles through computer networks in despicable and unacceptable.

I am deeply concerned about this situation, and I look forward to receiving your opinion on the above questions as soon as possible.

Sincerely,

PAUL TRIBLE.

U.S. DEPARTMENT OF JUSTICE,
CRIMINAL DIVISION, OFFICE OF
THE ASSISTANT ATTORNEY GENERAL,

Washington, DC, October 3, 1984.

Hon. PAUL TRIBLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR TRIBLE: This is in further response to your August 3, 1984, letter to the Attorney General asking whether 47 U.S.C. 223, as recently amended, applies to the transmission of obscene material by computer through telephone hook-up.

You inquired whether the statute reaches communications between computers. While it clearly covers telephone calls as such, neither the legislative history nor case law sheds any light on the question of whether the statute covers the transmission of information directly from computer to computer. In this area technological advancements have far outstripped legal developments. Although it seems reasonable that section 223 should apply to such conduct, assuming the material transmitted is obscene or indecent, we are unable to provide a definitive answer to this issue at this time.

However, an argument can be made that another statute, 18 U.S.C. 1462, covers transmissions betweeen computers over telephone lines. Section 1462 prohibits the interstate transportation by "common carrier" of, inter alia, "any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character."

An issue under this section is whether transmission by "common carrier" includes transmission by telephone lines. The District of Columbia Circuit has stated that the essential characteristic of a common carrier is its quasi-public character, which arises out of an undertaking to carry for all people indifferently. *National Association of Regulatory Utility Commissioners* v. *FCC*, 525 F.2d 630 (D.C. Cir. 1976).

This definition would appear to cover telephone companies, which are also clearly covered by the definition of "communication common carrier" as set forth in 47 U.S.C. 153(h), i.e., "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio." The Supreme Court has specifically noted that the definition contained in section 153(h) includes telephone companies. *United States* v. *RCA*, 358 U.S. 334, 348-349 (1959); *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U.S. 470, 474 (1940).

Another question which arises in connection with 18 U.S.C. 1462 is whether telephone transmissions are "matter" as used in that section. We have found no relevant case law, and a review of the legislative history of the statute and its various amendments disclosed nothing decisive. Only a 1950 amendment, which added phonograph recordings, sheds any light. This amendment was prompted by a Supreme Court decision, *United States* v. *Alpers*, 338 U.S. 680 (1950), which held that obscene phonograph records are prohibited "matter" within the meaning of section 1462.

The Court stated, 338 U.S. at 683-684:

> The obvious purpose of the legislation under consideration was to prevent the channels of interstate commerce from being used to disseminate any matter that, in its essential nature, communicates obscene, lewd, lascivious or filthy ideas . . . . This is a comprehensive statute, which should not be constricted by a mechanical rule of construction.

Four Justices, however, disagreed with this conclusion.

Congress, noting the difference of opinion among the Justices as to whether the term "matter" was broad enough to include phonograph records, and desiring to clarify the issue, amended the statute to include phonograph records. It should be stressed that the reason for the amendment was not to add to the statute, but, rather, to clear up any ambiguity from the dissent in *Alpers*.[1]

---

[1] The Court in *Alpers* noted that Congress had amended the statute in 1920 to include motion picture films but took the view that Congress did not intend this addition to imply that if obscene matter was not specifically denominated it was outside the prohibition of the statute or that only visual obscene matter was within the prohibition of the statute.

See 1950 U.S. Code Cong. Service, pp. 2438 *et seq.*

It can therefore be argued that *Alpers* supports the proposition that obscene telephone transmissions are included within the meaning of "matter" as used in section 1462. Just as in the case of phonograph recordings, the fact that Congress has not yet chosen to specify such transmissions does not mean that they are excluded from cov-

erage under the statute. As the Court stated in *Alpers*, Congress intended by this statute to proscribe generally the dissemination of obscene material. Including telephone transmissions would therefore be a reasonable application of the statute. The counter-argument is that Congress provided specifically for obscene "telephone" calls in 47 U.S.C. 223, and federal law is limited by what is provided in that section.

We have also considered whether the transmission of this material would be covered by a third statute, 18 U.S.C. 1465, which prohibits the interstate transportation, for the purpose of sale or distribution, of obscene material, including, *inter alia*, any "picture, film, . . . electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character." However, the legislative history suggests rather strongly that this statute was enacted to cover private carriage rather than use of a common carrier. H.R. Rep. No. 690, June 1, 1955, p. 2. During debate, Congressman Kenneth B. Keating of New York stated that this legislation was intended to fill a "serious loophole" in the law which permitted carriage of obscene material "by private automobiles and trucks." Congressional Record, June 7, 1955, p. A4050. Therefore, if telephone companies are common carriers, it would appear that this section does not apply. Moreover, the section is limited to transportation for sale or distribution.

Additionally, you expressed concern that pedophiles would exchange names, addresses and telephone numbers of their victims by computer telephone hook-up. Section 223, title 47 U.S.C., is, in essence, limited to the interstate communication of obscene or indecent material, and such computerized lists would not appear to fall within its scope. Moreover, as you noted, communications covered by recently-enacted subsection (b) must be for a commercial purpose.

In summary, a definitive response to the question of whether the interstate transmission of obscene material between computers over telephone lines violates 47 U.S.C. 223 or 18 U.S.C. 1462 will have to await further development of case law. At this time, we can only say that the use of telephone lines to transmit information or material which is *per se* neither "obscene" nor "indecent," such as names, addresses and telephone numbers, is not conduct proscribed by the language of either of these statutes and thus would appear not to oe prohibited by current Federal law.

We hope that this information will be of assistance to you.

Sincerely,

STEPHEN S. TROTT,
Assistant Attorney General,
Criminal Division.

By:

VICTORIA TOENSING,
Deputy Assistant
Attorney General,
Criminal Division.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, August 21, 1984.

Hon. PAUL S. TRIBLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR TRIBLE: Chairman Fowler has requested that I respond to your recent correspondence, in which you inquired whether the phrase "by means of telephone," contained in 47 U.S.C. § 223, applies to transmissions made by use of a computer. Apparently, your inquiry was instigated by the discovery that pedophiles have been compiling, by means of computers, informative data on their victims, and you are concerned that the possibility exists that such information may be exchanged through computer networks which utilize telephone lines.

While we believe that Section 223 would probably apply to the use of telephone lines by computers, whether in conjunction with a computer modem or with a desk top telephone, it does not appear that Section 223 applies to the transmission of messages which are not in themselves obscene or indecent. Section 223(a), in relevant part, makes it a crime to make "any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent." Exchanges of data concerning solely the names, addresses and telephone numbers of victims of child molesters would not seem to fall within the offense defined by Section 223(a). Secton 223(b) is plainly inappliable to telephonic transmissions between computers because the gravaman of the offense under Section 223(b) is the making of an obsene or indecent communication to a minor.

I hope this is responsive to your inquiry. If there is any further way in which I or my staff can be of assistance to you in this matter, please do not hesitate to contact me.

Sincerely yours,

BRUCE E. FEIN,
General Counsel.

Mr. TRIBLE. Mr. President, there is clearly no consensus on whether the use of computers by pornographers

and pedophiles is a Federal crime. The legislation I am introducing today would resolve these uncertainties. Section 2 of the bill makes it clear that the exiting prohibition on interstate transportation of obscene material applies to interstate computer transmissions. It does so by adding a new subsection on computers to 18 U.S.C. 1462.

In addition, the bill amends 18 U.S.C. 2251 and 2252 to penalize the production or distribution of an array of materials related to child molestation and child pornography. It would proscribe any printed or computer-transmitted statement whose purpose is to facilitate the sexual abuse or sexually explicit depiction of a child. It would also proscribe printed statements or computer transmissions aimed at buying, selling, or exchanging child pornography.

Thus, the legislation would forbid a pedophile from communicating by computer or in writing about his abuse of children. He could no longer use his home or office computer to locate other child molesters. In addition, he would not be able to exchange the names, addresses, or other descriptive information about his victims with other pedophiles, if his intent was to facilitate further abuse of those children.

Moreover, pedophiles and others who collect child pornography could no longer contact one another in writing or by computer. Inquiries and advertisements via these media by persons wishing to produce, buy, sell, or trade child pornography would be prohibited. These acts would be punished just as severely as the actual production and distribution of child pornography.

We must ensure that misuse of computer technology does not contribute to the abuse of our children or the spread of obscenity. The legislation that I am introducing today would do so. I urge my colleagues to cosponsor this important bill, and I ask unanimous consent that a copy be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1305

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Computer Pornography and Child Exploitation Prevention Act of 1985".

SEC. 2. Section 1462 of title 18, United States Code, is amended by—

(1) inserting after subsection (c) the following:

"(d) any obscene, lewd, lascivious, or filthy writing, description, picture, or other matter entered, stored, or transmitted by or in a computer; or "Whoever knowingly owns, offers, provides, or operates any computer program or service having reasonable cause to believe that the computer program or computer service is being used to transmit in interstate or foreign commerce any matter the carriage of which is herein made unlawful; or"; and

(2) inserting at the end thereof the following: "For purposes of this section—

"(1) the term 'computer' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device;

"(2) the term 'computer program' means an instruction or statement or a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system;

"(3) the term 'computer service' includes computer time, datz processing, and storage functions; and

"(4) the term 'computer system' means a set of related connected or unconnected computers, computer equipment, devices, and software.

SEC. 3. (a) Section 2251 of title 18, United States Code, is amended—

(1) in subsection (a) by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(2) in subsection (b) by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(3) by redesignating subsection (c) as subsection (d); and

(4) by inserting after subsection (b) the following new subsection:

(c) Any person who knowingly enters into or transmits by means of computer, or makes, prints, publishes, or reproduces by other means, or knowingly causes or allows

to be entered into or transmitted by means of computer, or made, printed, published, or reproduced by other means—

(1) any notice, statement or advertisement; or

(2) any minors' name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information,

for purposes of facilitating, encouraging, offering, or soliciting sexually explicit conduct of or with any minor, or the visual depiction of such conduct, shall be punished as provided in subsection (d) of this section, if such person knows or has reason to know that such notice, statement, advertisement, or descriptive or identifying information will be transported in interstate or foreign commerce or mailed, or if such information has actually been transported in interstate or foreign commerce or mailed.

SEC. 4. Section 2252 of title 18, United States Code, is amended—

(1) in subsection (a) by striking out "subsection (b)" and inserting in lieu thereof "subsection (c)";

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection:

(b) Any person who knowingly enters into or transmits by means of computer, or makes, prints, publishes, or reproduces by other means, or knowingly causes or allows to be entered into or transmitted by means of computer, or made, printed, published, or reproduced by other means any notice, statement, or advertisement to buy, sell, receive, exchange, or disseminate any visual depiction, if—

(1) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(2) such visual depiction is of such conduct;

shall be punished as provided in subsection (c) of this section, if such person knows or has reason to know that such notice, statement, or advertisement will be transported in interstate or foreign commerce or mailed, or if such notice, statement, or advertisement has actually been transported in interstate or foreign commerce or mailed.

SEC. 5. Section 2255 of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

(5) "computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility directly related to or operating in conjunction with such device.

Mr. DENTON. Mr. President, I am pleased to join my esteemed colleague, Senator TRIBLE, in support of the bill which he has offered today, of which I am an original cosponsor. I commend Senator TRIBLE for his leadership role in introducing this piece of legislation, which seeks to establish criminal penalties for the transmission by computer of obscene matter or matter which pertains to the sexual exploitation of children.

The rapid evolution of Federal communication channels has increased the technical complexities of regulating interstate communication in certain problem areas. There is great concern that pedophiles exchange names, addresses, and telephone numbers of their child victims by computer telephone hook-up. There is evidence that this exchange of information supports the pedophile in his continued pattern of sexually molesting children. Concern for this problem prompted me, as chairman of the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, to schedule a hearing on the subject of the use of computers to transmit material inciting crime, particularly crimes involving the sexual abuse of children.

I had the opportunity to hear testimony that documented the terrible consequences of child sexual abuse, when I served as chairman of the Subcommittee on Family and Human Services of the Senate Committee on Labor and Human Resources, during a series of hearings on the breakdown of the family in the United States, as well as a series of hearings on the reauthorization legislation for the Child Abuse Prevention and Treatment and Adoption Reform Act. The subcommittee heard testimony from a number of professionals in the child abuse treatment community that the effects of child abuse and child sexual abuse linger long after the bruises heal. Many felons now behind bars are said to have been abused as children. In addition, there is substantial evidence that the children who have been abused are more likely to grow up and become child abusers themselves.

In my capacity as a member of the Subcommittee on Juvenile Justice of the Senate Committee on the Judiciary, I heard testimony that indicated that sexually exploited persons are unable to develop healthy, affectionate relationships in later life, that they may have sexual dysfunction, and that they may become victims in a continuous cycle of abuse.

The prevention of sexual exploitation and abuse of children constitutes a governmental concern of the highest order. Effective action must be taken immediately to stop the dissemination of obscene matter and the potential growth of a nationwide pedophile network. I urge support of S. 1305.

Senator DENTON. Thank you very much, Senator Trible, for your expert testimony. I look forward to working with you. And I commend you again for your efforts in this regard.

I have no questions for you, sir. And I thank you for your testimony.

Senator TRIBLE. Thank you, Senator.

Senator DENTON. If your schedule permits, I would invite you to join the subcommittee to receive the remaining testimony. And if your schedule does not permit, I would be more than happy to submit any questions you have for the witnesses.

Senator TRIBLE. Thank you, Senator. I will accept your invitation and stay with you a few moments. I appreciate that.

Senator DENTON. At this point I must apologize to Ms. Toensing. Due to a scheduling conflict, I must temporarily leave so that I may make a statement before the Energy Committee. Hopefully I will return before you complete your testimony. But temporarily I will turn the gavel over to Senator Trible. He has graciously consented to assume the Chair. And I will return soon.

Senator TRIBLE. That is the quickest progression I have ever made. I have become a member of the subcommittee and chairman in a matter of moments.

Thank you, Mr. Chairman.

Senator DENTON. Thank you.

Senator TRIBLE. The next witness is the Honorable Victoria Toensing, the Deputy Assistant Attorney General for the Criminal Division, Department of Justice.

I welcome you to this hearing. Your complete statement will of course be placed in the record, and you are invited to read that statement or summarize as you see fit. We thank you for being here this morning.

STATEMENT OF HON. VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. TOENSING. Thank you, Mr. Chairman. Congratulations on your new position.

I will be summarizing some of my statement.

I want to thank you and the subcommittee for inviting me to testify about pedophiles' use of computers to transmit information about their victims. All of us here, of course, condemn this terrible child abuse. And I welcome the opportunity to evaluate it from a statutory perspective.

Under existing law in our federal system, most child abuse and child pornography is punishable under State or local statutes. Essentially, Mr. Chairman, I view child pornography as child abuse, that is really what we are talking about. But let me explain briefly how child pornography is treated differently from adult pornography, and the old *Miller* standard.

As you know, the Supreme Court laid down the *Miller* community standards test for the trier of fact to decide whether a work or product is obscene. And under that test it was not always easy to prosecute those who dealt in or who produced child pornography, because what we had to do was prove that the picture, the product, was in itself obscene. And you know that from your days as a Federal prosecutor, Mr. Chairman.

In 1982 the Supreme Court decided *New York* v. *Ferber*, and in that case held that the obscenity *Miller* standard does not really apply to child pornography, it does not apply to the photographs or other depictions of children engaging in sexual conduct. Instead the Court viewed visual depiction of a child engaging in sexual acts as the crime. It does not have to be obscene; there only has to be a visual depiction of the child engaged in a sexual act.

The rationale behind that opinion is very easy to understand. The rationale was, of course, that even to ask the child to engage in this kind of conduct was harmful to the child, and there was minimal, I believe the Court said, if any, redeeming value.

And so with that in mind, finally, last year, the Federal prosecutors received a statute that has some teeth into it. From that statute, Mr. Chairman, we have pursued a policy of very vigorous enforcement of our child pornography violations. As I said, the production of such material, the very production of that kind of material, constitutes an act of child abuse.

I would just like to read to you, Mr. Chairman, for the record the statistics that the Justice Department now has on our prosecution of child pornography.

Between January 1, 1978, and May 21, 1984, before we had the act, there were 69 defendants indicted. Between May 21, 1984, and June 6, 1985, we have 97 defendants indicted. Thus we have indicted more in 1 year than we had in the 6 previous years.

Sixty-two defendants were convicted from January 1, 1978, through May 21, 1984. In the last year, May 21 through June 6, 50 defendants convicted.

So I must complement all of us as we all worked on this new statute, the Senate and the House and the Justice Department. And we are feeling very grateful that we finally have something that has some teeth.

And I might also add that we are having a second seminar on how to investigate and prosecute child pornography cases. That will be in Washington next month.

Present Federal pornography statutes prohibit the importation, mailing, and interstate transmission of obscene material and child pornography. These statutes are 18 U.S.C. 1461, 1462, 1465, and 2252. Federal law also prohibits the use of children for the production of child pornography, and that is 18 U.S.C. 2251, so long as the requisite interstate nexus can be established.

Another statute which you also will be addressing here, Mr. Chairman, prohibits the use of the telephone to make obscene comments. And that is 47 U.S.C. 223. These statutes utilize a variety of terms to regulate the transmission of this kind of material. And they use terms like obscene, lewd, lascivious, indecent, filthy material.

But what has happened is, the Supreme Court looked at all of these terms, and in other than child pornography situations the Court has said they all have to meet the *Miller* obscene standard. So it is clear that none of the statutes which I have just outlined would encompass the transmission of information by computer, unless that information or material was determined to be legally obscene or would constitute the child pornography sexual depiction that would be the exception.

There is no Federal statute which expressly deals with the use of computers for the transmission of child pornography. While there can be respectable arguments made that 18 U.S.C. 1462 and 47 U.S.C. 223 apply to computer transmission of obscene materials—and only obscene materials—over interstate telephone lines, that is really not a sure winner in the Federal courts.

Again, specific legislation in this area will be helpful if we really want to outlaw the computer transmission of obscenity or child pornography.

We believe that such legislation would pose no constitutional problem. It is abundantly clear that neither obscene material nor child pornography is protected by the first amendment. It is also clear that indecent material which is not obscene, but which is in and of itself offensive, may be regulated civilly if not banned. The extent to which legislation may go beyond this point to ban material which is merely communicative in nature and not per se obscene or indecent is somewhat more problematic.

As a general rule, the first amendment prohibits the Government from interfering in communication of purely factual information even where that material communicated is of a commercial nature. Thus, in our view, legislation which seeks to ban the transmission of only descriptive on factual information about juveniles with nothing more, without a specific intent, would raise serious constitutional problems.

Recognizing, however, the extreme importance of having legislation in this area, Mr. Chairman, we would be willing to work with you on any type of legislation that you would like for us to consider.

Senator Denton did not return, but that is the end of my statement, Mr. Chairman. If you have any questions——

Senator TRIBLE. High office and power last so briefly. Senator McConnell has arrived. And he is indeed the man who will chair this hearing. So I yield to my friend and colleague from Connecticut and then follow on.

Senator MCCONNELL. I have not moved to Connecticut yet.

Senator TRIBLE. My friend and colleague, Senator McConnell from Kentucky.

Senator MCCONNELL. I want to commend Senator Trible for his interest and activity in this most important field. I would apologize

for my late arrival. There are usually four different things going on at the same time.

I am going to ask that my opening statement be inserted into the appropriate place of the report and submit that for the record.

[The following statement was submitted for the record:]

Opening Statement of Hon. Mitch McConnell, a U.S. Senator From the State of Kentucky

MR. CHAIRMAN, I AM PLEASED TO PARTICIPATE IN THIS HEARING TODAY, AND I COMMEND YOU FOR HOLDING THIS HEARING ON SUCH AN ELUSIVE AND TROUBLING TOPIC.

AS YOU KNOW, MR. CHAIRMAN, I HAVE BEEN DEEPLY CONCERNED ABOUT THE STATUS OF CHILDREN IN OUR SOCITY, FROM THE VERY YOUNG ON THROUGH ADOLESCENCE. IT IS IN THESE EARLY FORMATIVE YEARS THAT CHILDREN WILL EITHER DEVELOP THE ATTITUDES AND ORIENTATION NECESSARY TO STEP INTO MEANINGFUL, FULFILLING ROLES IN OUR SOCIETY, OR WILL SLIP INTO THE SUBCULTURE THAT WAITS FOR SO MANY OF THE VICTIMS OF CHILD ABUSE AND EXPLOITATION OR WHO ARE FORCED TO RUN AWAY FROM THEIR HOMES BECAUSE OF NEGLECT OR ABUSE. YET THROUGHOUT THE PAST SIX YEARS, DURING WHICH I HAVE BEEN ACTIVELY WORKING TO ENHANCE THE STATE OF PROTECTION FOR OUR CHILDREN, FEW THREATS TO THE WELLBEING OF OUR YOUNG PEOPLE HAVE STRUCK ME AS MORE ABHORRENT THAN THE SEXUAL AND PORNOGRAPHIC EXPLOITATION OF CHILDREN.

PEDOPHILES ARE LARGELY RESPONSIBLE FOR THE PROBLEM. THE CLINICAL DIAGNOSIS OF PEDOPHILE IS AN ADULT WHOSE CONSCIOUS SEXUAL INTERESTS AND OVERT BEHAVIOR ARE DIRECTED EITHER PARTIALLY OR EXCLUSIVELY TOWARD CHILDREN.

THE PEDOPHILE FALLS INTO TWO PSYCHOLOGICAL CLASSIFICATIONS. THE "FIXATED" PEDOPHILE IS USUALLY A WHITE MALE WITH AN ATTRACTION TO YOUNG BOYS. THIS PEDOPHILE"S INTEREST IN BOYS DOES NOT EXTEND TOWARD ADULT MEN, THEREFORE THE FIXATED PEDOPHILE IS NOT HOMOSEXUAL: HE IS A "PEDOPHILE". FREQUENTLY HE HAS AFFECTION FOR HIS VICTIM AND OFTEN CAN IDENTIFY WITH HIS VICTIM BECAUSE, ACCORDING TO AT LEAST ONE STUDY, OVER 80 PERCENT OF CHILD MOLESTERS WERE THEMSELVES SEXUALLY ABUSED AS CHILDREN. ACCORDING TO A. NICHOLAS GROTH, DIRECTOR OF THE SEX-OFFENDER PROGRAM AT

50-512 O—85——2

THE CONNECTICUT CORRECTIONAL INSTITUTION, THE PEDOPHILE IS "REENACTING HIS OWN VICTIMIZATION, BUT HE WANTS TO CHANGE IT INTO A WARM AND LOVING EXPERIENCE WHERE HE IS IN CONTROL, TO PURGE THE ORIGINAL FEAR". THE VICTIMIZED CHILD, ON THE OTHER HAND, VIEWS THE ENCOUNTER WITH FRIGHT AND CONFUSION. AND DESPITE HIS WARM FEELINGS, THE PEDOPHILE IS NOT ABOVE THREATENING THE CHILD TO PREVENT HIM FROM TELLING HIS PARENTS OF THE RELATIONSHIP, WHICH COULD INVOLVE ANYTHING FROM FONDLING AND MUTUAL MASTURBATION TO ANAL OR ORAL INTERCOURSE.

THE OTHER CLASS OF PEDOPHILE IS THE "REGRESSED" OFFENDER. UNLIKE THE FIXATED PEDOPHILE, THE REGRESSED OFFENDER IS A MAN WITH A NORMAL HETEROSEXUAL ORIENTATION WHO TURNS TO YOUNG GIRLS AT A CRISIS POINT, SUCH AS DIVORCE OR A PROFESSIONAL SETBACK. REGRESSED OFFENDERS ARE OFTEN INCESTUAL, AND THEY COMMIT INCEST, NOT BECAUSE OF FAMILY DYNAMICS, BUT BECAUSE THEY ARE GENUINELY AROUSED BY CHILDREN. THEY HAVE BEEN DESCRIBED AS "CHILD MOLESTERS WHO STAY AT HOME".

BECAUSE THE REGRESSED OFFENLERS'S INVOLVEMENT WITH CHILDREN IS CLEAR DEPARTURE FROM HIS OTHERWISE NORMAL SEXUAL ACTIVITY, AND BECAUSE HIS ACTION IS THE RESULT OF ADULT-LIFE STRESS SITUATIONS, PSYCHO-THERAPISTS CLAIM TO HAVE SOME SUCCESS IN TREATING THESE PEDOPHILES. TREATMENT OF FIXATED PEDOPHILES, ON THE OTHER HAND, HAS BEEN LARGELY UNSUCCESSFUL.

A GROWING BODY OF EVIDENCE AND AN INCREASING NUMBER OF MEDICAL, SOCIOLOGICAL AND LEGAL EXPERTS ARE CONCLUDING THAT CHILD MOLESTERS WITH A LIFELONG HISTORY OF EMOTIONAL AS WELL AS SEXUAL INVOLVEMENT WITH CHILDREN ARE NOT CURABLE. IT HAS BEEN SAID THAT PEDOPHILIA IS NOTHING MORE THAN A SEXUAL PREFERENCE, LIKE HOMOSEXUALITY. UNFORTUNATELY, THE SEXUAL ACTIVITY IS NEVER CONSENSUAL. OTHERS SAY THAT PEDOPHILIA IS NO MORE AN ILLNESS, THAN SAY, BANK ROBBERY IS AN ILLNESS AND THAT TREATMENT HAS BEEN USED AS AN ESCAPE FROM RESPONSIBILITY.

PEDOPHILES ARE LARGELY RESPONSIBLE FOR THE CHILD PORNOGRAPHY PRODUCED, DISTRIBUTED AND SOLD IN THE UNITED STATES. WHEN THE SUPREME COURT RULED THAT THE FIRST AMENDMENT DOES NOT PROTECT CHILD PRONOGRAPHY, THERE WAS AN IMMEDIATE POLICE CRACKDOWN ON LARGE SCALE COMMERCIAL PRODUCERS AND DISTRIBUTORS. PORNOGRAPHERS SUCH AS CATHERINE WILSON, KNOWN AS "BLACK CATHY", WHO, ACCORDING TO LOS ANGELES POLICE DEPARTMENT DET. LLOYD MARTIN, WAS RESPONSIBLE FOR 80 PERCENT OF THE CHILD PORN INDUSTRY IN THE UNITED STATES, WERE ARRESTED AN PUT OUT OF BUSINESS. HOWEVER, FAR FROM ENDING THE CHILD PORNOGRAPHY INDUSTRY, THE LAW ONLY DROVE PRODUCERS AND DISTRIBUTORS FARTHER UNDERGROUND. AND WHILE THE LAW HAD EFFECTIVELY INHIBITED SELLERS OF KIDDIE PORN, COMMERCIAL PORNOGRAPHY CONSTITUTES ONLY A SMALL FRACTION OF ALL CHILD PORNOGRAPHY PRODUCED IN THE UNITED STATES. DET. SGT. TOM ROGERS, WITH THE INDIANAPOLIS POLICE DEPARTMENT SPECIALIZING IN PORNOGRAPHY INVESTIGATIONS, HAS SAID THAT MOST KIDDIE PORN TODAY IS SIMPLY TRADED. "EVERYONE CAN AFFORD A POLAROID CAMERA. SOMEONE GETS INVOLVED WITH A NIECE OR NEPHEW OR A NEIGHBOR, TAKES SOME PICTURES, HAS THEM DUPLICATED, AND THEN TRADES THEM WITH OTHER COLLECTORS."

PEDOPHILES' FASCINATION WITH CHILD PORN STEMS FROM MANY DIFFERENT FACTORS. MANY PEDOPHILES TAKE PICTURES OF THEIR VICTIMS IN ORDER TO SHOW OTHER PEDOPHILES. LIKE A MAN OR OR WOMAN WHO TAKES PRIDE IN DISPLAYING A PICTURE OF HIS SPOUSE OR LOVER, PEDOPHILES TAKE GREAT PRIDE IN PROVING THEIR TALENTS TO THEIR PEERS BY PRESENTING PRONOGRAPHIC PHOTOS OF THEIR VICTIMS IN PARTICULARLY SEDUCTIVE OR INNOCENT POSES. DEALERS WITH FRESH FACES, ONES THAT HAVE YET TO BECOME THE TWISTED LEERS COMMON TO CHILDREN WHO HAVE BEEN SUBJECTED TO SEXUAL EXPLOITATION FOR VERY LONG, CAN CHARGE TOP DOLLARS FROM PEDOPHILES SHOPPING FOR PHOTOS OF PURE, MORE VIRGINAL CHILDREN. THEY ALSO USE CHILD PORN TO LOWER THE INHIBITIONS OF PROSPECTIVE VICTIMS. BY EXPOSING A CHILD TO PORNOGRAPHIC PHOTOS OF CHILDREN AND ADULTS IN SEXUAL ENCOUNTERS, THE PEDOPHILE TRIES

TO DEMONSTRATE TO THE CHILD THAT BEHAVIOR OF THIS SORT IS ACCEPTABLE. PEDOPHILES WILL USE PARTICULARLY INNOCENT AND HAPPY-LOOKING CHILDREN FOR THIS SORT OF MANIPULATION, AS WELL AS OFFERING THE VICTIM SOME SORT OF MATERIAL REWARD, LIKE MONEY, A NEW BIKE, MOVIE OR FANCY MEAL. ONCE A CHILD HAS BEEN VICTIMIZED, THE PEDOPHILE TAKES PHOTOS OF HIS NEW "LOVER" IN ORDER TO "CAPTURE THE MOMENT", PARTICULARLY THE FIRST FEW ENCOUNTERS WHICH PRESENT THE PERIOD WHEN THE CHILD WAS THE MOST SEXUALLY ATTRACTIVE TO THE PEDOPHILE. CHILD MOLESTERS OFTEN HAVE THOUSANDS OF PHOTOGRAPHS IN ELABORATE FILING SYTEMS BASED ON AGE OR ANY MYRIAD OF CLASSIFICATION SYSTEMS. THE COLLECTIONS HELP TO INFLATE THE EGO OF THE PEDOPHILE AS HE RELIVES SEXUAL ENCOUNTERS WITH THE CHILDREN HE HAS VICTIMIZED AND RECALLS EACH RELATIONSHIP.

IT IS PARTICULARLY COMMENDABLE THAT YOU HAVE CALLED THIS HEARING, MR. CHAIRMAN, BECAUSE THE USE OF COMPUTER BULLETIN BOARDS BY ORGANIZATIONS DEDICATED TO THE PROPOGATION OF CHILD PORNOGRAPHY AND CHILD PROSTITUTION IS AN ALARMING NEW DEVELOPMENT. THERE IS GOOD REASON TO BELIEVE THAT EXISTING LAW DOES NOT PROHIBIT TRANSMISSION VIA COMPUTER OF MUCH OF THE INFORMATION THAT FUELS THE PEDOPHILIC TRAVESTY OF CHILD PRONOGRAPHY AND PROSTITUTION. YET COMPUTER TRANSMISSION OF THIS MATERIAL IS POTENTIALLY FAR MORE PERVASIVE THAN EVEN THE EXCHANGE OF POLORAID PHOTOGRAPH AND OTHER SUCH "DO IT YOURSELF" PORNOGRAPHY.

I AM NOT EAGER TO ENACT LEGISLATION INFRINGING UPON THE LEGITIMATE RIGHTS OF OUR CITIZENS UNDER THE CONSTITUTION TO TRANSMIT INFORMATION AS THEY SEE FIT, NOR TO ENHANCE IN ANY WAY THE INTENSION OF GOVERNMENT INTO PRIVATE AFFAIRS OF INDIVIDUALS. BUT INFORMATION SUCH AS THAT USED BY PEDOPHILES IS NOT LEGITIMATE, AND DESERVES NO PROTECTION.

I LOOD FORWARD TO THE TESTIMONEY OF THE WITNESSES.
THANK YOU, MR. CHAIRMAN.

Senator MCCONNELL. This is an adjunct of a field I have had a longstanding interest in, the field of missing and exploited children. And certainly the use of children for commercial purposes, whether it is publications or in any manner described here, is a growing problem in this country. I am particularly interested in Senator Trible's evidence and Senator Denton's efforts, and your testimony.

And on behalf of Senator Denton, there are several different questions I would like to ask for the record. They are rather lengthy but I will do that for Senator Denton in his absence.

Senator TRIBLE. Go ahead.

Senator MCCONNELL. There is concern that pedophiles exchange names and addresses of their victims by telephone computer hookup. This communication supports pedophiles in their continued pattern of sexually molesting children. You can see, with any specific factual circumstances, where it would be fair to characterize the exchange of this information as an act which furthers the commission of certain other crimes, such as child abuse, child sexual abuse, child pornography, child kidnaping.

Because this is criminal coconspiracy, why would the general conspiracy statutes not be used to prosecute a pedophile in an appropriate interstate activity where it can be shown that computer telephone communication is part of the activity of a "network of pedophiles" which is the intent to entice and solicit molestation of children?

If you can remember all of that, you are a genius. Can you focus on any part of that?

Ms. TOENSING. I can think of an answer.

Senator MCCONNELL. OK. We have a creative staff here.

Ms. TOENSING. When you prosecute a conspiracy case, you have to look at what is the crime that is the essence of the conspiracy. In order to have someone be a part of that conspiracy, they would have to be part of the agreement to commit X, whatever that crime is, kidnaping, whatever the crime that you are talking about with conspiracy.

To put the pedophile using the computer into that conspiracy, you would have to show that he or she entered into an agreement for the purpose of violating, for example, the kidnaping. We use that as the essence of the conspiracy.

What I am really saying is that it is a problem with proof here. It would not be an easy case to prosecute. You would have to have evidence that there was an agreement to violate the conspiracy.

Did that not answer your question?

Senator MCCONNELL. Yes. This one is even worse, this one is a page long. I think what I will do is submit this one to you for the record.

Ms. TOENSING. I accept.

Senator MCCONNELL. No. 3 is a short one. Communications between pedophiles consist of more than the names, addresses, and telephone numbers of children. As for examples, where they consist of descriptions of or which imply sexual activity between adults and children, why should these communications not be regarded at the very least as lewd or indecent and come within the prescription of current Federal law?

Ms. TOENSING. Of course we are all repulsed by the fact that people are using information like this. However, we do not have a Supreme Court case that allows us to do that yet.

United States v. *Ferber* said that there had to be explicit sexual depiction of children engaging in sexual acts. The written word has not been considered exempt from first amendment protection. And that is the problem there, Senator.

Senator MCCONNELL. The next question is only half a page long, so we will see if we can do that.

DOJ in its letter to Senator Trible dated October 3, 1984, stated that

> A definitive response to the question of whether interstate transmission of obscene material between computers over telephone lines violates 47 U.S.C. 223 or 18 U.S.C. 462 will have to wait further development of case law.

Is it within the Department of Justice's power to take measures to use computers linking telephone lines to be used to transmit material which contributes to and furthers crimes involving child molestation or child pornography, or is new legislation from Congress necessary to adequately deal with the problem?

Ms. TOENSING. Yes. Both of them prohibit only obscene kind of material. So new legislation would be required if you were going to criminalize transmitting the child pornography or the sexually explicit depictions of children.

Senator MCCONNELL. I believe that covers the questions that Senator Denton has. Senator Trible.

Senator TRIBLE. I would simply like to thank you for your presence today. Your statement underscores the need for congressional action to meet this very real problem, a problem that is widespread and a problem that is growing.

This Senator, and I know members of this subcommittee, look forward to working with you to shape legislation that will tackle the problem and do it in a constitutionally acceptable manner and one that will permit our prosecutors to do a good job.

When I was a prosecutor many years ago, we really did not have the tools with which to tackle these kinds of problems. Obviously your testimony has indicated the success that our U.S. attorneys offices have had in tackling some of these problems. And we want to assist further in that undertaking.

Ms. TOENSING. We appreciate that.

Senator TRIBLE. We wish you well.

Senator MCCONNELL. Thank you.

[The prepared statement of Ms. Toensing and a response to a written followup question of Senator Denton follow:]

Prepared Statement of Victoria Toensing

Mr. Chairman and Members of the Subcommittee,

My name is Victoria Toensing. I am a Deputy Assistant Attorney General of the Criminal Division. I am pleased to discuss with you the subject of "The Use of Computers to Transmit Material Inciting Crime." Specifically, Mr. Chairman, your letter of invitation indicated that the Subcommittee wishes to address the interstate transmission of information by pedophiles about their victims.

Child molestation is condemned by decent people of all civilized nations. Under existing law within the United States, most acts of child abuse are punishable under state or local statutes rather than federal statutes. I know of no indication that state and local authorities have failed to discharge their responsibilities under such laws. Indeed, it appears that child molestation is universally treated as a matter of extreme gravity.

The federal statutes relevant to child abuse are those which prohibit the production and distribution of pornographic material. We have pursued a policy of particularly vigorous enforcement of child pornography violations, since the production of such material constitutes an act of child abuse. Indeed, in 1984 the Department worked with Congress in developing several amendments designed to strengthen the then existing child pornography statutes. That effort culminated in May 1984, with the enactment of a set of vastly upgraded child pornography statutes. As a result, since last May more defendants have been indicted by federal grand juries for child pornography violations than had been indicted during the prior six and one-half years. Our record in obtaining convictions on those indictments is an impressive one.

Federal statutes pertaining to pornography provide a comprehensive prohibition against the importation, mailing and interstate transmission of obscene material and child pornography (18 U.S.C. §§ 1461, 1462, 1465, and 2252). Federal law also prohibits the use of children for the production of child pornography (18 U.S.C. § 2251), so long as the requisite interstate nexus can be established. Another statute prohibits the use of the telephone to make obscene comments (47 U.S.C. § 223). Although some of these statutes purport to regulate the transmission of "obscene, lewd, lascivious, indecent, and filthy" material, federal courts have construed all these words as being synonymous with the legal term "obscene." Hamling v. United States, 418 U.S. 87 (1974); Manual Enterprises, Inc. v. Day, 370 U.S. 478 (1962). It is quite clear that none of these statutes would cover the transmission of information, by computer or otherwise, unless it is legally obscene or constitutes child pornography.

We know of no federal statute which expressly deals with the use of computers for the transmission of child pornography. While respectable arguments can be made that 18 U.S.C. § 1462 and 47 U.S.C. § 223 apply to the computer transmission of obscene materials over interstate telephone lines, specific legislation in this area would be helpful if computer transmission of obscenity or child pornography becomes a problem. At this point, we are unaware of any indication that computers are, in fact, being used to transmit such materials.

Such legislation would, we believe, pose no constitutional problem. It is abundantly clear that neither obscene material nor child pornography is protected by the First Amendment. New York v. Ferber, 458 U.S. 747 (1982); Miller v. California, 413 U.S. 15 (1973). It is also clear that indecent material which is not obscene but which is in and of itself offensive may be regulated civilly, if not banned. Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978).

The extent to which legislation may go beyond this point, to ban material which is communicative in nature and not per se obscene or indecent is somewhat more problematic. As a general rule, the First Amendment prohibits the Government from interfering with communication of factual information, Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), even where the material communicated is of a commercial nature, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976). Thus, in our view, legislation which seeks to ban the transmission of descriptive information about juveniles and nothing more would raise serious constitutional problems. Recognizing, however, the extreme importance of moving aggressively against persons who perpetrate acts of child molestation, the Department of Justice will be happy to review any legislation which the Subcommittee might wish to propose in this area.

50-512 O—85——3

U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

AUG 1 1985

Honorable Jeremiah Denton
United States Senate
Washington, D.C. 20510

Dear Senator Denton:

This is in response to your letter of June 21, 1985, enclosing a follow-up question in connection with my testimony on June 11, 1985, regarding the use of computers for the transmission of child pornography and information concerning minors. You also request Department of Justice views on S. 1090 and S. 1305.

You state correctly that the Supreme Court in Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978), held that "indecent" material is to be evaluated in terms of the context in which it appears. You postulate that the exchange of names and addresses of children among pedophiles is for the purpose of sexual gratification through sexual molestation of children and you inquire whether such names and addresses can be considered "indecent" in this specific context.

In my opinion, names and addresses of children cannot be considered "indecent" as the Court used that term in Pacifica. The Court was focusing upon the definition of "indecent" that was devised by the Federal Communications Commission in the administrative phase of the case. The Commission's definition, quoted in the Court's opinion at pages 731-732, is as follows: "[T]he concept of 'indecent' is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience."

Indeed, the Court emphasized, at page 743, "At most, however, the Commission's definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities." Thus, the Commission and the Court, in describing "indecent" material, were focusing upon material which is in and of itself offensive. Your question uses the term "context" to refer to the purpose for which the name and address information can be used. When the Court used this term, however, the Court was referring to appropriate time, place and manner restrictions which may be placed upon the dissemination of material which is inherently offensive, not the purpose for the dissemination of the material.

Therefore, in my judgment, juvenile name and address information cannot be considered "indecent" as that term has been used in federal statutes and interpreted by the Supreme Court.

The Department is currently preparing comments on S. 1090 and S. 1305 which will be furnished to the Committee on the Judiciary in the usual manner upon completion.

Sincerely,

VICTORIA TOENSING
Deputy Assistant
Attorney General
Criminal Division

Senator MCCONNELL. Our next witness is Kenneth V. Lanning, supervisory special agent assigned to the Behavioral Science Unit at the FBI Academy in Quantico, VA. Mr. Lanning began his duties with the FBI in 1970 and has been involved in studying the criminal aspects of deviant sexual behavior since 1973. He has specialized in the study of sexual victimization of children since 1981.

Mr. Lanning has made presentations before the National Conference on Sexual Victimization of Children, the National Conference on Child Abuse and Neglect, and the American Orthopsychiatric Association. He has testified before the U.S. Attorney General's Task Force on Family Violence, the President's Task Force on Victims of Crime, and the Senate Subcommittee on Juvenile Justice. He has published articles in the FBI Law Enforcement Bulletin and is a contributing author to Ann Wolbert Burgess' "Child Pornography and Sex Rings" (Lexington Books, 1984). Mr. Lanning has lectured before and trained thousands of police officers and criminal justice professionals.

Mr. Lanning, I welcome you to today's hearing. Your complete written statement will be placed in the record, and if you could summarize your testimony as briefly as possible, that would be good. And we will have the entire testimony submitted for the record.

STATEMENT OF KENNETH V. LANNING, SUPERVISORY SPECIAL AGENT, BEHAVIORAL SCIENCE UNIT, FEDERAL BUREAU OF INVESTIGATION ACADEMY, QUANTICO, VA

Mr. LANNING. Mr. Chairman and members of the subcommittee, I am Special Agent Kenneth V. Lanning, a member of the Behavioral Science Unit of the FBI's Training Division in Quantico, VA. I am here today at the chairman's invitation to provide information concerning the use of computers by pedophiles.

A pedophile is typically a male individual with a sexual preference for children. His sexual fantasies and erotic imagery focus on children. Law enforcement investigations have verified that pedophiles almost always are collectors of child pornography and/or child erotica.

They typically collect books, magazines, articles, newspapers, photographs, negatives, slides, movies, letters, diaries, sexual aids, souvenirs, toys, games, lists, paintings, ledgers, photographic equipment, et cetera, all relating to children in either a sexual, scientific, or social way. Not all pedophiles collect all these items. And certainly their collections vary in size and scope.

I would like to just briefly summarize the distinction between child pornography and child erotica. Child pornography was discussed here already today. It is in essence the permanent record of the sexual abuse of a child.

The only way you can produce child pornography is to sexually molest a child. Therefore, it is a permanent record of that abuse. It is a crime scene photograph. It is a photograph of a crime in progress. Each time that photograph is reproduced, distributed, disseminated, collected, and so on, it furthers the sexual abuse of the child.

I think that almost everyone is offended by it. Law enforcement officers for the most part have no difficulty recognizing the significance of clearcut child pornography.

However, there is a vast other amount of material which I refer to as child erotica. It is a broader and more encompassing term. It can be defined as any material relating to children that serves as a sexual purpose. It is therefore a somewhat subjective term. And almost anything could serve a sexual purpose for a given individual.

Some of the more common items are drawings, fantasy writings, diaries, souvenirs, sexual aids, manuals, nonsexually explicit photographs of children. This material must be viewed in its context.

The context in which it is found by the law enforcement officer will generally tell him of the significance and value of this in an investigation. Its primary value in an investigation is for intelligence and lead purposes and also to help to assist in proving intent by the offender.

Why do pedophiles collect this child pornography? Again, it is difficult to know with absolute certainly why any pedophile collects material. What we have found, however, is there seems to be three major reasons. The first reason is that it fuels their sexual fantasies. This material is a catalyst to their sexual fantasies about children.

Second, and I think one that is frequently overlooked but a very important one, is this material also fulfills needs for validation. Pedophiles frequently have this material and use it to validate what they are doing, to convince themselves what they are doing is really good behavior, OK behavior, beneficial to children, not hurting children.

And the last reason why they collect this material is a souvenir record of the sexual abuse. It is impossible for a pedophile to have a long-lasting relationship with any of his child victims because they all grow up. He is very frequently interested in collecting souvenirs or remembrances of that.

A photograph is certainly almost the perfect souvenir as it is for many people. The child never grows old, the child is young forever in the photograph.

How do pedophiles use this child pornography and erotica? In five major ways. They use this material for their own sexual arousal and gratification.

Second, they use this material to lower children's inhibitions. This is a significant and important use of child pornography, as well as adult pornography, by the pedophile to gradually lower the child's inhibitions and reluctance with sexually explicit material.

They also use their child pornography as part of the blackmail. It can be a very effective way to keep a child victim in line and maintain the secret. The child recognizes that this material is damaging to them and their reputation if this material is revealed to their parents, to law enforcement authorities, or for many children, most importantly, to their peers.

A fourth use of child pornography is as a medium of exchange. These individuals frequently exchange this material, swapping and trading it. Information is worth so many pictures, and so on and so forth.

And the fifth and final use of this material is for profit. I do not want to ignore the profit motive. There are some pedophiles who collect this material and their personal interest in this pornography is supplemented by their chance to make money from it.

The pedophile's collection usually has several important characteristics. These characteristics are as follows:

No. 1, it is important to him. Most pedophiles are willing to spend considerable time and money on their collection.

No. 2, this collection is constant. No matter how much he has, he never has enough. He never throws anything away.

No. 3, his collection is organized. And again, we are not talking about absolutes. There are no absolutes in human behavior, this is just typically true. It is usually maintained in detailed, neat, and orderly records.

No. 4, their collections are permanent. The pedophile may move it, hide it, give it to another pedophile, but probably the least likely thing is to destroy it.

No. 5, it is concealed. Because of the hidden or illegal nature of the pedophile's activity, the collection will be concealed, but not to the extent that he cannot have access to it.

The sixth and final characteristic of the collection is its need to be shared. Many pedophiles have the desire to show, tell others about their collection. Something that they put so much effort and work into they like to tell others about, which leads us to why I am here today. And that is the use of computers.

When you understand the needs of the pedophiles and the characteristics of his collection, there is a modern invention which can be of invaluable assistance to him. That invention is the computer.

It could be a large computer system at his place of business or a smaller computer in his home. It is simply a matter of modern technology catching up with a long-time personality trait. The computer helps fill the need for organization, souvenir records, and validation.

Law enforcement investigation has determined that pedophiles use computers in four major ways.

No. 1, storage and retrieval of information. Many pedophiles seem to be compulsive recordkeepers. A computer makes it easy to store and retrieve names and addresses of victims and other pedophiles. Innumerable characteristics of victims and sexual acts can easily be recorded and analyzed.

An extensive pornography collection can be cataloged by subject matter. Even fantasy writings and other narrative descriptions can be stored and retrieved for further use.

The second way pedophiles use computers is for communication. Many pedophiles communicate with other pedophiles. Now, instead of putting a stamp on a letter or a package, they can use a computer and some necessary peripheral equipment to exchange information. The amount and type of information which can be exchanged is limited only by the equipment available.

A third and maybe even the most significant use of computers by pedophiles is the electronic bulletin board. Pedophiles can use the computers to locate individuals with similar interests.

Like advertisements in "swinger magazines," electronic bulletin boards are used to identify individuals with mutual interest, con-

cerning age, gender, and sexual preference. This use of the computer is certainly not limited to pedophiles. There are many other individuals, many other types of sex offenders and individuals who have varying, maybe nonmainstream sexual preferences who use computers in the same way that pedophiles use them.

In the December 1983 issue of the North American Man-Boy Love Association [NAMBLA] bulletin, a member from Michigan proposed that NAMBLA establish its own electronic bulletin board. Private communication firms also offer message center services that allow computer users to have their messages duplicated and routed to designated receivers on the network.

The pedophile may use an electronic bulletin board to which he has authorized access or he may illegally enter someone else's system. It must be noted that the electronic bulletin board concept is a very common and valuable use of computers and the home computer. The pedophile is simply using this concept for his own particular needs.

The last major use of the computer by the pedophile is for business records. Those pedophiles who have turned their sexual interest in children and/or pornography into a profitmaking business use computers the same way any business use them. Lists of customers, dollar amounts of transactions, descriptions of inventory, et cetera, can all be kept track of by computers.

Pedophiles as well as others involved in sex crimes can and do use computers. Law enforcement officers must be alert to the valuable source of intelligence and evidence. In one recent case a teenage hacker helped police break a pedophile's computer codes and thereby gain access to his records. Police must be alert to the fact that any pedophile with intelligence, economic means, and employment access might be using a computer in any or all of the above ways.

Thank you very much.

Senator McCONNELL. Thank you, Mr. Lanning.

I am extremely interested in your testimony. Back in late 1979 when I was county executive in Jefferson County, KY, I set up a special unit, which we called, at that time, the exploited child unit, which was a combination of social workers and police officers put together under the social worker's charge.

The purpose of the unit was in a very proactive kind of way, to go out and to arrest child molesters. But originally what developed our interest was the discovery that on a list of available children for sexual purposes were a group from Kentucky.

The presumption at the time was that the list had been transmitted through the mails. But obviously this kind of transmission in this day and age could occur in any way.

The clear indication in the case of our own unit is that the pedophiles are unquestionably recordkeepers and will take advantage of all the modern means of the communication to make available to other pedophiles children who have been involved in this kind of activity.

One other observation. Probably the most conspicuous arrest and conviction in the history of the exploited child unit in our county was of a foreign resident who was in this country on a green card basis who exploited a number of different children. And it was one

of the easiest cases we ever had because he had photographic records of everything that transpired.

So I suppose some good news about these kind of creeps is if you can catch them, you can certainly convict them, because they convict themselves with their own cameras. That is a propensity on the part of this kind of criminal, and it can be very helpful to us in arresting them and getting them off the streets.

Just a couple of observations about my own experience as a law enforcement officer in this particular field. I see that Senator Denton is returning and I am going to give him back his questions.

But I think that your testimony is extremely significant, and does point out the various propensities of these kinds of criminals and the way in which we can get at them.

Mr. LANNING. This stuff can be valuable evidence even if the individual is not prosecuted, specifically for some computer use, this kind of material can be valuable evidence for the investigator to help convict him of other crimes.

Senator MCCONNELL. In that particular case the judge, I think, did the most appropriate thing. He decided that this country would not spend a nickel incarcerating this guy. We simply sent him back to his country of origin, including his record.

And that is one criminal who if he is out molesting children that we do not have to worry about him molesting American children. And we did not have to pay the cost of incarcerating him either. But it was the easiest case we had in 5 years dealing with various forms of sexual exploitation, simply because of this propensity to record every disgusting act.

Senator DENTON. Senator McConnell, I understand you have an 11 o'clock engagement. I want to thank you for your part in today's hearing. I also want to recognize your leading posture in your own home State, before you came to the Senate, in the field of missing and exploited children.

I have commended you before for that. I am sure you will be a valuable member in the pursuit of the ends of the thrust of this hearing.

Senator MCCONNELL. Thank you, Senator.

Senator DENTON. Thank you very much.

Senator Trible, do you have questions for this witness?

Senator TRIBLE. An observation and a quick question or two, Mr. Chairman.

First of all, you have constructed a profile of people who, by your thorough description are computer users by nature. They really are influenced to turn to computers by the characteristics that you have so fully defined.

And I can see now more clearly why it is that the use of computers is so extensive and far reaching on the part of these people.

Mr. LANNING. There certainly are pedophiles who do not use computers. There are pedophiles from all socioeconomic groups and levels of intelligence. There are some that do not have the economic means to have access to computers, some who do not have the intelligence. But when they do have the economic means and the intelligence, the computer seems to be a device which fits in with the characteristics that many of them have.

Senator TRIBLE. You have suggested that there are other kinds of sexual offenders that employ computers for their sordid purposes. Can you be more specific?

Mr. LANNING. Well, in essence what we find is that anybody who has sexual preferences which are not in the mainstream—I do not know if we want to use the term abnormal or some other term. But these individuals have difficulty finding other people. In other words, if you are interested and you like to dress up in a rubber suit and be whipped, or something like that, you have got to find other people who have that interest.

And so what we find is that certain individuals with certain sexual preferences are always seeking out others who share that interest. If you pick up any of the magazines commonly referred to as "swinger magazines," you see the kind of ads that are in these magazines asking to meet people with certain sexual preferences. Those very same people can now use electronic bulletin boards and computers to find each other. I guess the old saying, birds of a feather flock together, applies. They just simply use electronic bulletin boards to find each other.

Senator TRIBLE. And these computer networks are presently in use?

Mr. LANNING. Yes.

Senator TRIBLE. Give me some sense of the numbers of people who are engaged in these kinds of activities?

Mr. LANNING. That is a question that I have been asked on numerous occasions. I personally do not really know. I do not know how you would determine it.

I have talked to people who have discussed the possibility of adding up all the names on mailing lists, the number of arrests, and other ways to come up with a total figure. I personally do not have any way to determine how many child molesters or pedophiles there are in this country or even in the world.

The only thing I know is, it is a large problem. Exactly how large it is, it is difficult for me to say for sure.

Senator TRIBLE. How about organized groups?

Mr. LANNING. Well, there are a few organized groups that have gotten a lot of publicity because they have in essence chosen to publicize themselves.

One of the misconceptions that I personally believe is that some people have become overly concerned with the groups that have given themselves a name, such as NAMBLA, or other societies that have gotten a lot of attention, and they think that if they do not have a group or chapter in their area that they do not have this problem.

What I am trying to point out is, pedophiles frequently get together, but the smart ones do not call themselves anything, do not give themselves a name and draw attention to themselves. They just get together to share information and to validate each other's behavior, to share and disseminate information about victims without attracting attention to themselves.

There certainly are other pedophiles who are totally independent. They operate alone and are not in touch with other molesters at all. But many of them seek this validation and seek to find

others who have a common interest in order to validate their behavior.

Senator TRIBLE. Are you familiar with these sex talk services?

Mr. LANNING. So-called Dial-a-Porn?

Senator TRIBLE. Professionally familiar with those kinds of services?

Mr. LANNING. Somewhat, yes.

Senator TRIBLE. Do you know the number of those that exist?

Mr. LANNING. I do not have the exact numbers. But I know if you pick up some of the more common so-called men's magazines, some of them will have a half a dozen to a dozen consecutive pages of ads with Dial-a-Porn services listing all kinds of phone numbers. So I do not have a specific number. But I would imagine that the numbers are tremendous and probably growing just from the list of advertisements in magazines that I've seen.

Senator TRIBLE. Now, these are of several natures I am told. There are the telephone services, but also there are the computer services as well.

Mr. LANNING. As I pointed out in my statement, the concept of the electronic bulletin board is a very common and valuable use of a computer and a home computer. And there are many people who are using this to contact other people with very worthwhile interests and so on. So electronic bulletins boards are a valuable service of the computer. There are organizations that are legitimate electronic bulletin boards that serve this purpose for individuals who want to find each other and link up with each other.

Senator TRIBLE. Let us move beyond the legitimate networks and focus on those that are at issue here today.

Mr. LANNING. The illegitimate ones would be mainly surreptitious. You would have to through some investigation find out about their existence. These kinds of individuals would be certainly individuals who will be following these proceedings, who will be studying the law, who will be reading up on the law. They very often have a great deal of information about what is and is not against the law and sometimes are very capable about avoiding the breaking of laws.

Senator TRIBLE. There are perhaps many of these networks that exist secretly. However, there are also advertisements that appear in these so-called swinger magazines that advertise computer networks.

Mr. LANNING. Right. These are——

Senator TRIBLE. Here is one such ad from "High Society" that is called "The World is Getting User Friendly with Computer Sex." What kind of networks are there such as this? Are there a substantial number?

Mr. LANNING. What these individuals can do is, have a large legitimate electronic bulletin board, one of these message center services. If they studied the law very carefully, they might decide they can engage in so much activity or allow messages of a certain type into the system without technically violating any laws. And they would probably do that. That would be a legitimate service.

Then there are others who are willing to circumvent the laws and take risks and chances. They can be an informal or formal

group. For example, NAMBLA has been discussing setting up their own bulletin board system.

It could be a hacker who does it on his own, disseminates information, access codes or phone numbers to certain select people that he knows and is very careful about who gets that information. Certainly, if law enforcement agencies find out about it, they can attempt to infiltrate these computer networks. So it runs the whole gamut from legitimate to semilegitimate to totally illegitimate and illegal.

Senator TRIBLE. Mr. Chairman, I thank you.

Senator DENTON. Thank you.

Mr. Lanning, are you aware of any specific instance which could be considered proof of a pedophile communication network and exchange of information of pedophiles? And do you have information that they by their existence and use would have contributed to the subsequent molestation of children?

Mr. LANNING. Yes; in my statement I included an example of an actual case involving an individual who used computers in the furtherance of his sexual abuses of children. In that particular case it was his own internal recordkeeping system and, as best as law enforcement could determine, he was not communicating with other pedophiles.

But I am aware of other cases in which pedophiles have in fact used the computers to communicate with each other and to disseminate information to each other.

Senator DENTON. From your information, would it be fair to characterize the exchange of this position as an act which furthers the commission of certain other crimes, such as sexual abuse, child sexual abuse, child pornography, child prostitution, and where it would be appropriate to regard pedophiles and network exchange as criminal coconspirators?

Mr. LANNING. I would say yes. And I would say that that happens both directly and indirectly. By that I mean in some cases the information disseminated to a pedophile may tell him about the availability of a child or the name and address of a child, how to gain access to a child. That would be direct involvement.

Indirectly many of these individuals are simply communicating with each other. Just the camaraderie that is established, just the fact that they talk to each other and pat each other on the back, that indirectly furthers this.

Because what it is telling these pedophiles and what many of these pedophiles truly believe is that they are child lovers, they are good people, not bad people. And this communication and this camaraderie furthers that and tells them you do not have to be ashamed of what you do, you are a good person, what you do with these children is good and wonderful for them and you are a loving, caring person.

And when somebody is getting that kind of validation from someone else, I believe that further encourages the activity.

Senator DENTON. Do the records they keep seem to be limited to names, addresses, and telephone numbers, or do they include statements which either specifically describes sexual activity with children or would be commonly understood by other pedophiles of descriptions of sexual activities with children?

Mr. LANNING. Yes, the computer can be used for both. The computer can be used for simply lists, names, addresses, phone numbers, that kind of stuff, but also can be used to record descriptive narrative information. For example, after engaging in sexual activity with a child, the offender might then report certain information about the sexual activity and enter into it the computer.

In one case that I know of the pedophile had by his television set a little index card. And right after having sex with the boy, he would go over and fill out the index card. And it would contain information about what sexual activity they engaged in, the size of the penis, how they did it, how they enjoyed it, and so on. He would write that down immediately, and take that card and use it as a basis for entry into the computer system so he would have a permanent record of it.

The computer enables them to store this data and retrieve it more easily than trying to fumble through boxes of cards and so on.

Senator DENTON. Are we dealing with a interstate problem here or purely local and State problem?

Mr. LANNING. I would say both, and maybe to a certain degree international problems. In other words, these individuals certainly link up with each other locally in regional communities. They also in some cases are going to deal with going across State lines. A lot of it is going to depend on what part of the country you are talking about. In the northeast where the States are small, like New Jersey and New York, there are very short distances involved.

So I think it is local, intrastate, and interstate.

Senator DENTON. I am a supporter of the National Center for Missing and Exploited Children. When a pedophile is arrested and biographical information on children seized, is that biographical information turned over to the National Center in an attempt to locate missing children?

Mr. LANNING. I understand that specific question has been directed to the Director of the FBI. And he will be furnishing a written reply.

What I would like to add, in my 15 years in the Bureau it has always been the policy of the FBI to disseminate any such information to the appropriate law enforcement agencies. But as for the specific dissemination of certain lists to the National Center on Missing and Exploited Children, the response to that is coming from the Director's office in a written reply.

Senator DENTON. You certainly have been a key witness today, Mr. Lanning. I want to thank you. I have other questions which I will submit to you, and ask that if you receive any questions from me or any other of the members that you reply to them in writing promptly.

Senator Trible?

Senator TRIBLE. I have no further questions. I thank Mr. Lanning for being here and for his testimony. It has been very helpful.

Mr. LANNING. Thank you.

[Mr. Lanning's submissions for the record follow:]

Prepared Statement of Kenneth V. Lanning

Mr. Chairman and members of the subcommittee:

I am Special Agent Kenneth V. Lanning, a member of the Behavioral Science Unit of the FBI's Training Division. I am here today at the Chairman's invitation to provide information concerning the use of computers by pedophiles.

Introduction

A pedophile is typically a male individual with a sexual preference for children. His sexual fantasies and erotic imagery focus on children. Law enforcement investigations have verified that pedophiles almost always are collectors of child pornography and/or child erotica. They typically collect books, magazines, articles, newspapers, photographs, negatives, slides, movies, letters, diaries, sexual aids, souvenirs, toys, games, lists, paintings, ledgers, photographic equipment, etc., all relating to children in either a sexual, scientific, or social way. Not all pedophiles collect all these items. Their collections vary in size and scope.

Collection

What the pedophile collects can be divided into two categories. Child pornography can be behaviorally (although not necessarily legally) defined as the sexually explicit reproduction of a child's image, voice or handwriting. In essense, it is the permanent record of the sexual abuse of a child. The only way you can produce child pornography is to sexually molest a child. Child pornography exists only for the consumption of pedophiles. If there were no pedophiles, there would be no child pornography. It includes sexually explicit photographs, negatives, slides, magazines, movies, video tapes, audio tapes, and handwritten notes.

Child erotica on the other hand, is a broader and more encompassing term. It can be defined as any material, relating to children, which serves a sexual purpose for a given individual. It is in a sense a subjective term, as almost anything potentially could serve a sexual purpose. However, some of the more common types of a child erotica include drawings, fantasy writings, diaries, souvenirs, sexual aids, manuals, letters and non-sexually explicit photographs of children. Generally, possession and distribution of these items do not constitute a violation of the law by themselves. However, besides possible legality, there is another important distinction between child pornography and child erotica. Although both may be used in similar ways by the pedophile, child pornography has the added and more important dimension of its effect on the child portrayed. Discussions and research on pornography often focus on the effects on the viewer rather than on the effects of the child subject. The latter is particularly crucial in evaluating the harm of child pornography.

Children used in pornography are desensitized and conditioned to respond as sexual objects. They are frequently ashamed of and/or embarassed about their portrayal in such material. They must deal with the permanency, longevity and circulation of such a record of their sexual abuse. Some types of sexual activity can be repressed and hidden from public knowledge; child victims can fantasize that some day the activity will be over and they can make a fresh start. But there is no denying or hiding from a sexually explicit photograph or video tape. The child in a photograph or video tape is young forever, and therefore the material can be used over and over for years. Some children have even committed crimes in attempts to retrieve or destroy the permanent records of their molestation.

Whatever the reasons that pedophiles collect child pornography and erotica, its existence is undeniable and widespread. During any intervention or investigation of child sexual abuse, the possible presence of such material must be explored. For law enforcement officers, the existence and discovery of a child erotica

and child pornography collection can be of invaluable assistance to the investigation of any child sexual abuse case. Obviously, child pornography itself is usually evidence of criminal violations. However, the ledgers, diaries, letters, books and souvenirs that are often part of a child erotica collection can also be used as supportive evidence to prove intent and for lead information. Names, addresses, and pictures of additional victims; dates and descriptions of sexual activity; names, addresses, phone numbers, and admissions of accomplices and other pedophiles; as well as descriptions of sexual fantasies, background information, and admissions of the subject are frequently part of a child erotica collection. Child erotica must be viewed in the context in which it is found. Although many people might have some similar items in their home, it is only the pedophile who collects such material for sexual purposes as part of his seduction of children.

Motivation

It is difficult to know with certainty why pedophiles collect child pornography and erotica. There may be as many reasons as there are pedophiles. Collecting this material may help pedophiles satisfy, deal with, or reinforce compulsive, persistent sexual fantasies about children.

Collecting may also fulfill needs for validation. Many pedophiles collect academic and scientific books and articles on the nature of pedophilia in an effort to understand and justify their behavior. For example, one such book states that research shows that children often participate willingly in sexual behavior with adults. One pedophile arrested by the police had in his possession an article stating that children's sexual rights and freedom allow them access to pornographic materials and choice of sexual partners, including adults. Child molestation and incest would be criminal acts only if unwilling children were involved, the article went on to say. For the same reasons, pedophiles also frequently collect and sometimes distribute articles and manuals written by pedophiles in which they attempt to justify and ration-

alize their behavior as unblameworthy. In this material, pedophiles often share techniques for finding and seducing children and avoiding or dealing with the criminal justice system.

Collecting child erotica and pornography also appears to meet needs for camaraderie and additional behavior validation. Pedophiles swap pornographic photographs the way boys swap baseball cards. As they try to improve and upgrade their collections, they get strong reinforcement from each other for their behavior. It reinforces the belief that because others are doing the same thing it is not wrong. The collecting and trading become a common bond. Only another pedophile will understand, validate, and reward the behavior.

The need for validation may also partially explain why some pedophiles compulsively and systematically save the collected material. It is almost as though each communication and photograph is evidence of the value and legitimacy of their behavior. For example, one pedophile sends another pedophile a letter, enclosing photographs and describing his sexual activities with children. At the letter's conclusion he tells his fellow pedophile to destroy the letter because it could be damaging evidence against him. Six months later police find the letter while serving a search warrant. Not only has the letter not been destroyed, it has been carefully filed as part of the second pedophile's organized collection.

Pedophiles frequently collect and maintain lists of names, addresses, and phone numbers of persons with similar sexual interests, screening the names carefully and developing the list over a long time. The typical pedophile constantly seeks to expand his correspondence. Names are obtained from advertisements in "swinger" magazines, pornography magazines, and even from legitimate newspapers. Correspondence usually begins carefully to avoid communicating with police. In many cases, however, the need to validate behavior continually and to share experiences overcomes concerns for safety. If mistakes lead to identification and arrest, the pedophile network often quickly alerts its members.

Another important motivation for collecting child pornography and erotica appears to stem from the fact that no matter how attractive any one child sexual partner is, there can be no long-term sexual relationship. All child victims will grow up and become sexually unattractive to the pedophile. However, in a photograph, a 9-year-old boy stays young forever.

Therefore pedophiles frequently maintain photographs of their victims. Some photographs may be sexually explicit, with the child nude or in varying stages of undress; in others the child is fully clothed. Although photographs of fully clothed children may not legally be considered child pornography, to the pedophile they are not much different from the sexually explicit photographs.

When photos are seized in a police raid, the pedophile may argue that photographs of fully dressed children are not part of the collection. In fact, they are an important part of the collection. The pedophile often keeps such photographs in his wallet. Many pedophiles even keep two sets of photographs of their victims. One set contains sexually explicit photographs; the other contains non-explicit photographs. Although this distinction may be important for criminal prosecution, to the pedophile each set might be equally stimulating and arousing. These victim photographs are like souvenirs or trophies of sexual relationships.

Uses of Child Pornography and Erotica

Although reasons why pedophiles collect child pornography and erotica are conjecture, we can be more certain of how this material is used. Study and police investigation have identified certain uses of the material.

Child pornography and child erotica are used for the sexual arousal and gratification of pedophiles. They use child pornography the same way other people use adult pornography - to feed sexual fantasies. Some pedophiles only collect and fantasize about the material without enacting these fantasies. In most cases

coming to the attention of law enforcement, however, the arousal and fantasy fueled by the pornography is only a prelude to actual sexual activity with children.

A second use for child pornography and erotica is to lower children's inhibitions. A child who is reluctant to engage in sexual activity with an adult or to pose for sexually explicit photos can sometimes be convinced by viewing other children having "fun" participating in the activity. Peer pressure has a tremendous effect on children: if other children are involved, maybe it is all right, the child thinks. In the pornography used to lower inhibitions, the child portrayed will appear to be having a good time.

Books on human sexuality, sex education, and sex manuals are also used to lower inhibitions. Children are impressed by books, and they often believe that if something is in a book it must be acceptable. The controversial sex education book Show Me has been used by many pedophiles for this purpose. Adult pornography is also used, particularly with adolescent boy victims, to arouse and to lower inhibitions.

A third major use of child pornography collections is blackmail. If a pedophile already has a relationship with a child, seducing the child into sexual activity is only part of the plan. The pedophile must also ensure that the child maintains the "secret" and tells no one else of the activity. Pedophiles use many techniques to do so; one of them is through photographs taken of the child. If the child threatens to tell his or her parents or the authorities, the existence of sexually explicit photographs can be an effective silencer. The pedophile threatens to show the pictures to parents, friends, or teachers if the child reveals their secret.

A fourth use of child pornography and erotica is as a medium of exchange. Some pedophiles exchange photographs of children for access to or phone numbers of other children. The quality and theme of the material determines its value as an exchange medium. One Willie Mays baseball card may be worth two or three

lesser cards; the same principle applies to child pornography. Rather than paying cash for access to a child, the pedophile may exchange a small part (usually duplicates) of his collection.

A fifth use of the collected material is for profit. Some people involved in the sale and distribution of child pornography are not pedophiles; they are involved to make money. In contrast, most pedophiles seem to collect child erotica and pornography for reasons other than profit. Others combine their pedophilic interests with the need to make money. Often they begin with nonprofit trading, which they pursue until they accumulate certain amounts or types of photographs, which are then sold to commercial dealers for reproduction in commercial child pornography magazines. Some collectors even have their own photographic reproduction equipment. Thus the photograph of a child, taken without parental knowledge by a neighborhood pedophile in a small American community can wind up in a commercial child pornography magazine with worldwide distribution.

The pedophile's collection usually has several important characteristics. These are as follows:

1. Important - The pedophile is willing to spend considerable time and money on the collection.

2. Constant - No matter how much the pedophile has, he never has enough; no matter how much he has, he never throws anything away.

3. Organized - The pedophile usually maintains detailed, neat, orderly records.

4. Permanent - The pedophile will move, hide, or give his collection to another pedophile, but will almost never destroy it.

5. Concealed - Because of the hidden or illegal nature of the pedophile's activity, the collection will be concealed but not to the extent that the pedophile does not have access.

6. Shared - The pedophile usually has a desire or need to show and tell others about his collection.

Computers

When you understand the needs of the pedophile and the characteristics of his collection, you begin to realize that there is a modern invention which would be of invaluable assistance to him. That invention is a computer. It could be a large computer system at his place of business or a small computer at his home. It is simply a matter of modern technology catching up with long time personality traits. The computer helps fill their needs for organization, souvenir records and validation.

Law Enforcement investigation has determined that pedophiles use computers in four major ways:

1. Storage and retrieval of information - Many pedophiles seem to be compulsive record keepers. A computer makes it much easier to store and retrieve names and addresses of victims and other pedophiles. Innumerable characteristics of victims and sexual acts can be easily recorded and analyzed. An extensive pornography collection can be catalogued by subject matter. Even fantasy writings and other narrative descriptions can be stored and retrieved for future use.

2. Communication - Many pedophiles communicate with other pedophiles. Now, instead of putting a stamp on a letter or package, they can use their computers and some necessary peripheral equipment to exchange information. The amount and type of information which can be exchanged is limited only by the equipment available.

3. Electronic Bulletin Board - Pedophiles can use their computers to locate individuals with similar interests. Like advertisements in "swinger magazines" electronic bulletin boards are used to identify individuals of mutual interest concerning age, gender and sexual preference. This use of the computer is not limited to pedophiles (see attachment A). In the December, 1983, issue of the NAMBLA Bulletin, a member from Michigan proposed that NAMBLA establish its own electronic bulletin board (see attachment B). Private communications firms offer message center services that allow computer users to have their messages duplicated and routed to designated receivers on the network. The pedophile may use an electronic bulletin board to which he has authorized access or he may illegally enter a system. It must be noted that the electronic bulletin board concept is a common and valuable use of a home computer. The pedophile merely uses this concept for his own needs.

4. Business records - Pedophiles who have turned their sexual interest in children and/or child pornography into a profit making business use computers the same way any business uses them. Lists of customers, dollar amounts of transactions, descriptions of inventory, etc., can all be kept track of by computer.

Conclusions

Pedophiles, as well as others involved in sex crimes, can and do use computers. Law enforcement officers must be alert for this valuable source of evidence and intelligence. In one recent case, a teenage "hacker" helped police break a pedophile's computer codes and thereby gain access to his records. Police must be alert to the fact that any pedophile with intelligence, economic means or employment access might be using a computer in any or all of the above described ways.

Case Example

In a small southern city, police identified a pedophile named Ralph, who was sexually involved with more than 50 young boys in the local area. Pursuant to a search warrant, the police seized the following items believed to be of evidentiary value: photographic equipment, polaroid cameras, film, a typewriter, an address book, a calendar book, ledgers, cancelled checks, biorhythm charts, a computer, and computer tapes.

Ralph was a meticulous recordkeeper. He had a notebook with the names, addresses, and telephone numbers of many of his victims. He had a calendar book showing dates and types of sexual activity. He had a diary containing photographs and narrative information about over 50 victims. He had a small memoranda book which contained a summary and analysis of his sexual activity with 31 victims over a certain period of time. In this book, he recorded information such as the youngest (5.26 years), the oldest (19.45 years), and the average (10.89 years) age of his victims, the average duration of sexual relations (2.2 years), the average number of sex acts per person (64.68), the number of various types of sexual acts performed, the number of sperm ejaculated by his victims per day, and biorhythm information for each of his victims.

For many of his "regular" boys, he maintained even more information. For each of these boys he had a chronological list of sexual acts, with each act assigned a consecutive number. This was then cross-referenced to his account ledger for each boy. The ledger was a running balance of the amount of money each boy had on account. Money would be added for doing work around the house, for sexual acts, and for picture-taking sessions. Money would be subtracted for clothing, cigarettes, games, cash, and other presents. He kept the cancelled checks showing the payments to each victim. He also had his victims make handwritten notes stating how much they enjoyed the sexual activity. He had photographs of the boys, many of which he kept in a green metal box.

The key to Ralph's meticulous recordkeeping was his computer. The computer contained information about sexual activity with over 400 boys and a few girls. He cross-referenced all the information he maintained on his victims. It contained a sexual history of each of his victims. He used it to keep track of the biorhythm charts of his victims. He also used it as an index for his child pornography collection so that he could locate photographs on specific sexual acts. The computer was accessed by using the name and an assigned bank account identification number of each victim. The computer also had a self-destruct program which the subject did not have an opportunity to initiate prior to his arrest.

Ralph's victims were primarily neighborhood boys whom he had befriended. He paid many of these boys for doing odd jobs around the house. His sexual acts with them consisted primarily of oral sex with some occasional anal sex. The subject always referred to the sexual acts as "projects". He frequently used alcohol to lower their inhibitions. Once the sexual acts began with the boys, he constantly reminded them not to tell anyone because it was their secret. He would attempt to justify the sexual acts by reading to his victims passages from the Bible which he claimed stated that this type of sex was of benefit to all humans.

All of Ralph's victims who were interviewed by the police stated that Ralph was a very nice man who was individually concerned with each of them. He paid them for work, sexual acts, and for photography sessions. He always encouraged the boys to compete with each other in the "projects". There were rewards of extra points and money for completing a sexual act better or longer than previously or better and longer than another boy. He created an "88 Club", in which a boy could become a member only after completing four different acts. Progress in joining this club was maintained on a chart.

After arresting Ralph, the police learned that he was on five-year's probation for sexually molesting children in another city. Ralph had also been convicted and served time for sexually molesting children 20 years earlier in another state. Ralph lied about this conviction on several job applications. Less than one month before his most recent discovery and arrest, Ralph's psychiatrist wrote a letter to his probation officer stating that "there is no indication that there has been recurrence of symptoms. I feel, therefore, that his problem remains in remission."

STATEMENT OF HON. JEREMIAH DENTON

CHAIRMAN OF THE SUBCOMMITTEE

I have some concern about placing explicit material into the record; however, because of the nature of the problem, I believe it is necessary for the public to be aware of the extent of the problem. It is for this reason that the following exhibits are included.

ATTACHMENT A

[From the Genesis magazine]

X-RATED COMPUTERS

YOU CAN USE YOUR COMPUTER AS AN INFORMATION SOURCE OR AS A DIRECT LINE TO SOME REALLY KINKY FOLKS

(By Michael Bane)

It is dark in Florida, and a cool breeze rustles the palm trees outside my window. Inside, it is quiet and dark, no light to disturb me. I sit down in front of the keyboard and feel the breeze through the open window. I flex my fingers, reach around back of the gray machine, and flick a switch.

The darkness is suddenly eased by the glow from my video screen—amber, not green, giving the whole computer a science-fiction aura. I slip a small disk into the computer, press a few buttons, and am rewarded by the amber screen's message: "Enter digits, or dial directly from phone."

I smile. Tonight, I'm going hunting, all around the world. The machine clicks steadily, and I know that somewhere, far away, a telephone is ringing. There is another click, and I know that the two machines, my own small one and another giant, are talking in R2D2 language, beeps and whirs. "Connect," the amber screen says.

"Read Conferences," I type. A long list of "conferences" appear on the screen—jokes, recipes, Create-A-Religion, Dodge Dart parts for sale . . .

"Read Adult. Conf," I type. "OPINIONS AS TO THE VALIDITY OR MORALITY OF OTHERS' SEXUAL PREFERENCES AND PRACTICES WILL NOT BE TOLERATED!" the amber screen reads. "'IF YOU ARE OFFENDED BY EXPLICIT SEXUAL MATERIAL, 'DO NOT READ THESE MESSAGES.*'"

Read Submessages," I type.

"+++SUBMESSAGES+++; Fantasies; Get/Your/Rocks/Off; Gay.Men; Women-of-the-World; Ebony.And.Ivory; Brown.Sugar."

"Read Brown.Sugar," I type.

"I'M A 28 YEAR OLD BLACK WOMAN WHO WOULD LIKE TO EXPERIENCE THE FEEL OF A HOT TONGUE ON MY CLIT . . . I'VE NEVER MADE LOVE TO A WHITE MAN. BUT AM WILLING TO TRY IF I CAN MEET SOMEONE WHO CAN TAKE CHARGE AND TEACH ME HOW TO BE A LOVING OBEDIENT SLAVE TO HIS POWERFUL PENIS . . ."

This is the part of the computer revolution you didn't read about in Time magazine.

Every night around the country and the world, thousands of screens light up, and thousands of people go hunting through the net of telephone lines that surround the world like a spider's web.

The hunters can be looking for something as simple as the afternoon's stock quotes, or, like the hero of the movie WarGames, they can be looking for the number of the Defense Department's master war machine. They can be looking for love in electronic places, or maybe they're just looking to talk.

While word processing and financial juggling remain the best known and most used aspects of the personal computer, how the computer got to be a star, the real giant, the earthshaker, is still lurking just around the corner.

Telecommunications, the act of one computer "talking" to another may well prove to be the pot of gold at the end of the computer rainbow—and, perhaps totally unexpectedly, the new way of reaching out and touching someone.

Telecommunications will allow you to check electronic "bulletin boards" and comb swap shops or tap into sophisticated data bases that allow you to search through millions of bits of information in a few seconds.

In fact, the information available via telecommunicating is expanding so quickly that it's impossible to list it. There are over 750 different services available on one system alone, The Source. This monster "information utility" includes business and financial analysis; financial market reports; stock, bonds, and metals news; air schedules and an online travel agency; discount shopping services; electronic mail and teleconferencing; movie reviews; computer games; the United Press International news wire; even the weather report.

In addition to the "department store" operations of many services like The Source or CompuServe, there are smaller, more specialized electronic bulletin boards. These bulletin boards range from classified ads to chatting with people having similar interests. Not surprisingly, the first bulletin boards were devoted to computer hobbyists, the guys in high school and college who wore slide rules on their belts and now drive chocolate-brown Mercedes-Benz cars and date Bianca Jagger look-alikes.

Predictably, it didn't take long for more prosaic interests to make their way into the computer underworld.

PEOPLE GO HUNTING THROUGH THE NET OF PHONE LINES THAT SURROUNDS THE WORLD

"Read Silk.Shorts," I type.

"REMEMBER WHEN LADIES USED TO WEAR THOSE TIGHT, TIGHT, TIGHT SHINY SILK JOGGING SHORTS? HOT STUFF, HUH? . . . I'D REALLY LIKE TO GRAB A GIRL WEARING SOME OF THOSE SHORT AND TIGHT THINGS AND FUCK THE SHIT OUT OF HER!

IT'S TOO MUCH!

+++ NO SUBMESSAGES+++"

I have a vision of some guy hunched over his Atari, typing gooey thoughts out along the line. I break connect, type in new digits, and the machine and I go hunting again.

The advantage of telecommunicating is that it allows you to check vast amounts of information for the answers to fit your specific needs in ways that would have been impossible just a few years ago. If you're only interested in football stories about your favorite team, you could search the United Press international sports wire, collect all the stories on your favorite team, print them out, and read them at your leisure. Or you could tap into one of the data-base services and search for every magazine article written on the team, then arrange to receive copies through

your computer. You can also arrange airline tickets, send mail, shop, play games, or write an electronic novel.

If the only thing you can think about is business, there's a staggering array of business news, from current stock prices to detailed data on many companies to the complete text of the Wall Street Journal. With a computer, you have more information at your fingertips than whole governments did just a few years ago.

There's so much information that it's hard to figure out what's really happening. The confusion comes from the fact that the new services are growing so quickly that it's hard to keep up with what's going on, and in computers, as in life, misinformation is the name of the game. Let's take it one step at a time.

The basic necessity for connecting to an information service or one of the specialized bulleting boards is either a computer or a terminal. Just because you purchased a computer doesn't necessarily mean that the computer is ready to communicate. Computer manufacturers seem dead set against providing a unit that just plugs in and runs. In fact, the reason that the home computer you bought for Christmas was so cheap was that without accessories, it's mainly a paperweight that plays games. Most personal computers require some type of interface to tie into telephone lines. A good rule of thumb is: the cheaper the computer, the more expensive the interface. Ask your dealer.

Typically, the interface to the modem that your phone connects to is referred to only in computerese, not English. When your dealer asks if you want "the asynchronous communications board with the serial port" for your personal computer, he means, "Do you want to give your computer the ability to talk to the rest of the electronic world?"

Assuming your computer is ready to go, your next purchase must be a modem, short for "modulator-demodulator." A modem is the device between your computer and the telephone system that translates information from one and converts it into information usuable by the other. A modem can be a separate device that sits alongside your computer, or it can be an electronic board built inside the machine. You may have noticed that this is starting to add up, dollarwise. You can always justify it by claiming you're trying to join the computer revolution. You'll also need a program for your computer to tell it what to do once the modem is connected.

Information sources usually charge an initiation fee, plus so much per hour for the amount of time you are connected to their service. For most personal computer services, the sign-up fee is $35 to $100 with use charges running from $5 to $25 an hour. The use charges can be billed to your major credit card. Bulletin boards, conference "trees" and the strange things you usually meet on the midnight ether are usually free, but first you've got to find them. This is harder than it sounds. Your dealer might have a list, but probably not of the "good" stuff. For that, try logging onto a bulletin board and asking. Even in the computer age, word of mouth is still the main way of relaying hot stuff. If that doesn't work, try calling (305) 686-4862, log on, and ask to purchase the guide to bulletin boards by one Ric Manning. In addition to adult and specialized listings, he also claims to have listings for "pirates," software bootleggers and people interested in interesting phone numbers. Things like this are against the law. If you do them, someone will come and put you in jail. You might want to keep that in mind.

As far as the information services go, the hardest decision for the new user is which ones to sign up for. Because telecommunication is still in its infancy, there are still opportunities for you to let the services know what you want. Some information services, such as Delphi, constantly ask their subscribers about new services. Local bulletin boards are especially sensitive to users' needs.

If your needs are strictly personal, look into The Source, CompuServe, or Delphi. They offer the broadest range of personal services to their subscribers, and their variety is, at times, staggering.

Once you're on-line, you'll find more and more uses for your computer's telephone linkup. Electronic banking is beginning to be available in some areas. This system allows you to pay bills by touching a few keys on the computer keyboard instead of writing a check and mailing the bill in. Computer owners will be able to monitor their cash more closely than ever before, keeping an up-to-the-minute, accurate tally on their finances from their computer keyboards.

Shopping by computer is available now through some of the large services and through Comp-U-Store in Stamford, Connecticut. Comp-U-Store subscribers can use their computers to search the company's data base for specific items and for the best prices. The item can then be ordered through the computer.

Electronic mail and teleconferencing are two aspects of telecommunicating that are becoming more popular for personal as well as business use. Electronic mail is exactly what the name implies—you send a letter on the computer rather than

through the U.S. Postal Service. Information services provide you with a "mailbox," an electronic address for your mail. You then connect to the service to receive and send mail. Teleconferencing allows a number of users with small computers to have a conference over the telephone. All the conference participants can have a permanent record of what went on (if they choose to save it on a disk or a printout), and the connect charges are typically less than a long-distance telephone charge.

I log onto one of the big information services, thinking that at least it's not a long-distance call. My phone bill may resemble the national debt. I flip through the menus, past wire services and newspapers and tax information, to games. For a while, I roam through the games—space games, war games, and even "ordinary" pre-electronic games like chess. Planets are being blasted, kings are castling, and I am bored.

I drift to the citizens band simulator—yes, kiddies, CB on the telephone! I go to Channel One, the adult channel, and assume my "handle" or identity, Continental Op, and "lurk," which means that I just listen, don't talk. The line is buzzing—Loo Loo, Handy Andy, peach, GOAT RIDER, . . . Dr. WHO . . ., BI-LADY . . . Juggs . . ., *-Dr. Detroit-*, Future Phreak. The conversation is just like CB (thousands of thousands of dollars, tons of sophisticated machinery, all to get an exact replica of a Saturday-night truckers' ball). Ten-four, y'all.

I am restless, and the list of bulletin boards is endless. The palms rustle outside my window. The world is at my fingertips.

ATTACHMENT B

[From the NAMBLA Bulletin, December 1983, vol. 4, No. 10]

A Proposal for a Computer Bulletin Board

(By a member from Michigan)

The foregoing proposal seems like an appropriate project for a NAMBLA member with background and/or interest in computers. If any such member, including the author, wishes to take leadership of such an endeavor, we will be very happy to hear from him. Such an individual should be willing to take charge and come up with a definite plan for a) funding and b) implementation.

As an educational and information disseminating organization, NAMBLA needs to communicate. One avenue of communication that has not been used is the computer bulletin board service (CBBS). Given the fact that many of the positions we take are at or near the borderline of the law, we need a forum which is rapid, flexible, and facilitates the interchange of ideas. A CBBS is well suited to these needs. This article is meant as an introduction to the concept of a NAMBLA CBBS. I sincerely hope it sparks many creative responses which will help determine the course of the project.

While there are doubtlessly many members already familiar with the bulletin board concept, making regular use of systems such as Lambda, South-of-Market, and the rest, an explanation of what a CBBS is and does is in order. A CBBS is a program that runs on a computer which allows people using their own computers to read or leave messages. In practice, most CBBS systems are a cross between the traditional cork and thumbtack bulletin boards and CB radios. It is possible to have long running discussions between a few or many people. To converse with a CBBS a person must have either a terminal (glass typewriter) or a computer with software that emulates a terminal. In either case he will need a modem—the device that allows two computers to talk over the phone. At current prices a minimal system that can act as a terminal costs about $300.

One of the chief uses of the CBBS will be as a complement to (not a supplement of) the NAMBLA bulletins. Currently, articles in the NAMBLA Bulletins and Journals can be divided into three categories: facts, feelings, and fiction. All of these would have a place in the CBBS which would also function as a conduit of articles for the NAMBLA Bulletins. The advantage the CBBS has over the paper Bulletins is that it allows people who do not belong to NAMBLA exposure to our ideas and goals. It does this in a totally safe and legal manner which can raise the outside world's level of understanding without raising its ire.

Three categories were mentioned above. These three seem to be natural divisions for the material that would appear on our CBBS. The facts section would contain short items about current and proposed laws, people arrested for 'sex crimes', NAMBLA members and activities in the press, addresses of federal congressmen,

etc. All callers will be welcome to read these messages (arranged in the traditional CBBS format) and submit items for possible inclusion.

The feelings section would be organized somewhat differently. Here, there will be user-specified topics with messages that anyone can read and add to. These topics will accumulate a great deal of text in time so they will be periodically condensed down. Topics might include things such as pornography or the age of consent. The closest analogy we have now is the Feedback section in the NAMBLA Bulletin. All callers would be welcome here as well.

The third section, fiction, would contain works of fiction and poetry such as are now found in the paper Bulletins, and the accretion stories like those on the Lambda CBBS. Restriction access to this section to members only is justified for two reasons. This portion of the board will require the most storage and therefore be the most costly so those that want to use it should pay for it. Restriction access will also remove the question of the propriety of such material being in the CBBS. This question of propriety is a very hot topic of debate in the NAMBLA Bulletins right now but this way lets us have our buns and eat them too.

To operate such a board will require three things: hardware, software, and a human operator. The hardware should be a computer with a hard-disk and a modem (the device that enables computers to talk via the phone) and a separate phone line. The software consists of the CBBS program itself and any support programs needed. The human system operator will be in charge of maintaining the system in good working order, organizing and editing the messages and discussions (eliminating fag-baiting messages, fixing spelling, making suggestions, 'chat'ting with users who need help), and doing whatever else is needed to keep the system going strong. Given the vast reserves of free time the above activities leave him, he might also prepare an occasional column for the NAMBLA Bulletin.

Obviously a CBBS is not going to be free. A good, reliable system will cost about $4,000. Since the author of this article is willing to match the first $200 in donations, this breaks down to a per member cost of about $6. After the first year the cost drops to about $2 per member needed to cover maintenance, insurance, and phone bills. A system in this price range will give us ample text storage for the forseeable future. In addition to the purchase of the system we will need the CBBS program and an operator. The author will either assume these responsibilities or aid those who do.

So there you have the basic proposal. Please take the time to consider it and respond, even with criticism. If you would like to explore some current bulletin boards mentioned above, call Lambda at (415) 658-2919 or South-Of-Market at (415) 469-8111 or the Midwest CBBS at (313) 455-4227. Most bulletin boards contain the phone numbers for many others.

RESPONSES OF HON. WILLIAM H. WEBSTER
TO QUESTIONS SUBMITTED BY SENATOR PAUL S. TRIBLE, JR.

October 2, 1985

1. Question - Is it your feeling that the leadership of any of the organized pedophile groups - NAMBLA, Rene Guyon, or others - is behind the creation of computerized communications networks?

1. Answer - The prepared statement of Special Agent Kenneth V. Lanning submitted to the Subcommittee on 6/11/85 indicated that in the December, 1983, issue of the North American Man Boy Love Association (NAMBLA) Bulletin, a member from Michigan proposed that NAMBLA establish its own computer bulletin board service. Any computer bulletin board established in such a public way (announced in a widely circulated bulletin) would be careful to include only information of a currently legal nature such as that already disseminated in the NAMBLA Bulletin. Although it is certainly possible that an individual member of NAMBLA, a member of any other pedophile support group, or any pedophile or individual operating independently might establish more surreptitious or underground electronic bulletin boards, there is no evidence that the organized pedophile groups control them.

2. Question - Would you comment on the extent of the computer "sex talk" services - those computer services similar to dial-a-porn that are being offered by High Society magazine?

2. Answer - The FBI has no specific information concerning the extent or volume of business of computer sex talk services. The only indication of the proliferation is the number of ads for such services in "adult" sex magazines. The ads would not be there for long if the services provided were not being used and were not profitable.

3. Question - The dial-a-porn telephone service spread at an incredible rate. Do you believe that the new computer "sex talk" services hold the same potential for rapid expansion?

3. Answer - Since they provide a similar service, the potential for expansion exists. However, their potential is somewhat limited by the need to possess a computer and some peripheral equipment in order to utilize them.

Senator TRIBLE. Thank you, Mr. Chairman.

Senator DENTON. Our final witness today is the Honorable Jack D. Smith, general counsel for the Federal Communications Commission. Mr. Smith has been with the Commission since 1974 and in his current position since October 1984.

I welcome you to today's hearing. Your complete statement will be included in the record. And if you care to, you can summarize your testimony, Mr. Smith.

STATEMENT OF HON. JACK D. SMITH, GENERAL COUNSEL, FEDERAL COMMUNICATIONS COMMISSION

Mr. SMITH. Thank you, Chairman Denton. I will abbreviate my testimony.

Chairman Denton, Senator Trible, I appreciate the opportunity to come before you today and present the FCC's views on a matter of grave concern—the use of telephone lines to facilitate the commission of crimes against children.

Unfortunately, the use of common carrier facilities for the transmission of materials which would facilitate crimes against minors was not foreseen by the framers of the Communications Act or Congress in recent amendments thereto. I have grave doubts that existing prohibitions contained in the Federal Criminal Laws encompass the use of telephone lines to facilitate such criminal activities.

The statutory authority contained in the Communications Act, which governs the use of telephone facilities for illegal purposes, is codified presently in section 223 of the act. That section prohibits use of interstate telephone facilities: (1) To make an abusive, threatening, or harassing call; (2) for making an obscene, lewd, lascivious, filthy, or indecent comment, request, suggestion, or proposal; and (3) to make an obscene or indecent communication for commercial purposes.

In response to increasing concerns over Dial-a-Porn, Congress has recently amended section 223 to prohibit the use of interstate telephone facilities for transmission of obscene or indecent messages for commercial purposes and to establish heavy penalties for such violations.

Senator DENTON. Excuse me, Mr. Smith. Would you place the mike just a little closer to your mouth, please.

Mr. SMITH. This amendment also directed the Commission to promulgate a regulation restricting minors' access to these services, compliance with which would give the Dial-a-Porn service provider a defense to prosecution. We promptly devised a regulation which restricted the hours during which Dial-a-Porn services could operate.

However, the second circuit set aside our regulation and remanded the proceeding to see if we could devise an alternative regulation that would be less restrictive on adults' access to Dial-a-Porn type services. The second circuit also directed that we do not attempt to enforce this statute absent promulgation of a valid FCC regulation. As a result, Dial-a-Porn services are continuing today unabated.

Now, we are again confronted with a use of telephone facilities for a purpose that simply was not envisioned by Congress at the time it enacted the Communications Act. We have analyzed the language of section 223(a) to determine if it can be read to cover the exchange of names, addresses, telephone numbers, and other data concerning the victims of child molesters.

Section 223(a) proscribes, to the extent relevant, the utterance of a comment, request, suggestion, or proposal which is obscene or indecent. Since the data exchanged by pedophiles is not obscene or indecent on its face, we do not believe that section 223(a) is applicable. However, to the extent a pedophile solicits another to commit a crime such as kidnaping, such activity would clearly fall within the ambit of title 18.

We also do not believe that the exchange of information which may facilitate crimes by pedophiles violates section 223(b), because the gravamen of the offense under that section is the making of an obscene or indecent communication to a minor for commercial purposes. The communications in question are between computers operated by adults arguably for private, noncommercial purposes. Nor, as I believe the Justice Department's Criminal Division has just explained, do the criminal laws presently forbid this type of activity.

Thus, it appears that no provision of the Communications Act or the Criminal Code presently makes it illegal to transmit this type of information by computer or otherwise, at least where no crime is solicited. We therefore believe that if communications between pedophiles are to be stemmed, legislation must be enacted which clearly prohibits interstate transmission of this type of information by computer or otherwise, as part of title 18 of the United States Code.

Senator Trible, you have already drafted legislation which would amend section 1462 of title 18 to establish criminal penalties for the transmission by computer of matter which could be used to facilitate the sexual exploitation of children or to assist in the interstate transportation of such information. Your bill would amend several sections of title 18.

We believe that your bill, with certain technical changes which we have already conveyed to your staff, will effectively remedy the problem at issue. Even though section 1462, which restricts the carriage in interstate commerce by express companies or "other common carrier[s]" of obscene or similar material, may currently apply to telephone facilities, in order to avoid confusion I would suggest that the preamble to section 1462 be amended to clarify that it applies to interstate communications by means of wire or radio. That change would make it clear that the use of any communications facilities by pedophiles to transmit prohibited material falls within the ambit of 1462.

Moreover, I believe that the legislative history of this amendment should make it clear that this newly added phrase includes all means of interstate communications, whether or not such communications are licensed as common carrier services, because new services, such as fiber optic and laser light technologies, might not be covered as drafted. With this change I believe that your propos-

al will help to deter the use of interstate communications facilities to further crimes against children.

While amending sections 1462 and 2251 of title 18 in the manner proposed by Senator Trible will provide the necessary tools to combat the use of communications facilities to further crimes by pedophiles, the subcommittee should also consider amending the Federal racketeering statutes. For example, section 1952 of title 18, which, among other things, prohibits the use of any facility of the interstate commerce to distribute the proceeds of unlawful activities or to otherwise promote such unlawful activities, could be amended to include pedophilia as an unlawful activity.

Alternatively, section 1953 of title 18, which prohibits the use of interstate commerce to send materials to be used for bookmaking, could be amended to forbid the use of communication facilities to transmit material which would encourage or facilitate crimes by pedophiles.

As you are aware, Senator Helms has recently introduced new legislation, known as S. 1090, to amend section 223 of the Communications Act. We are somewhat concerned about legislation to deter use of communications facilities for criminal purposes being introduced and drafted in a patchwork manner, and we think that Senator Helms' bill and Senator Trible's bills are closely related and should be considered together.

A comprehensive legislative solution is needed to prevent the use of interstate communications facilities to further crimes against children; one that will make it easier for the Justice Department and the Federal Communications Commission to enforce their areas of responsibility under the new legislation.

Thank you very much. If there are any questions, I will be happy to answer them.

[Mr. Smith's submissions for the record follow:]

Prepared Statement of Jack D. Smith

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THE OPPORTUNITY TO COME BEFORE YOU TODAY AND PRESENT THE FEDERAL COMMUNICATIONS COMMISSION'S VIEWS ON A MATTER OF GRAVE CONCERN -- THE USE OF TELEPHONE LINES TO FACILITATE THE COMMISSION OF CRIMES AGAINST CHILDREN.

DUE TO ADVANCES IN MODERN TECHNOLOGY, INDIVIDUALS WHO OWN COMPUTERS ARE ABLE TO EXCHANGE INFORMATION WITH ONE ANOTHER OVER THE NATION'S TELEPHONE LINES. A PRACTICE THAT APPEARS TO BE PROLIFERATING, ACCORDING TO RECENT REPORTS, IS THE USE OF COMPUTERS BY CHILD MOLESTERS OR PEDOPHILES TO COMMUNICATE THE NAMES AND ADDRESSES OF CHILD VICTIMS TO POTENTIAL EXPLOITERS OR TO LOCATE PORNOGRAPHIC MATERIAL DEPICTING THE SEXUAL EXPLOITATION OF CHILDREN. ACCORDING TO THE MEDIA, PEDOPHILES KEEP EXTREMELY DETAILED RECORDS OF THEIR SEXUAL EXPLOITS, INCLUDING DESCRIPTIONS, NAMES AND ADDRESSES OF THEIR CHILD VICTIMS, AS WELL AS DETAILS OF THEIR ACTIVITIES WITH THOSE VICTIMS, WHICH THEY HAVE A NEED TO SHARE WITH OTHERS OF THE SAME PREFERENCE. WHILE A GREAT DEAL OF THIS INFORMATION IS NOT IN ITSELF OBSCENE OR INDECENT -- SUCH AS THE NAMES AND ADDRESSES OF CHILD VICTIMS -- THIS INFORMATION MAY BE USED TO TARGET CHILDREN THAT MAY BE VULNERABLE TO SEXUAL EXPLOITATION BY PEDOPHILES. INASMUCH AS THIS INFORMATION IS TRANSMITTED OVER INTERSTATE TELEPHONE LINES AND MAY BE USED TO ENCOURAGE OR FACILITATE SEXUAL CRIMES AGAINST MINORS IN VIOLATION OF STATE AND FEDERAL LAWS, IT IS AN APPROPRIATE SUBJECT OF FEDERAL REGULATION.

UNFORTUNATELY, THE USE OF COMMON CARRIER FACILITIES FOR THE TRANSMISSION OF MATERIALS WHICH WOULD FACILITATE CRIMES AGAINST MINORS WAS NOT FORESEEN BY THE FRAMERS OF THE COMMUNICATION'S ACT, OR CONGRESS IN RECENT AMENDMENTS THERETO. I HAVE GRAVE DOUBTS THAT EXISTING PROHIBITIONS CONTAINED IN THE FEDERAL CRIMINAL LAWS ENCOMPASS THE USE OF TELEPHONE LINES TO FACILITATE SUCH CRIMINAL ACTIVITIES.

THE STATUTORY AUTHORITY CONTAINED IN THE COMMUNICATIONS ACT, WHICH GOVERNS THE USE OF TELEPHONE FACILITIES FOR ILLEGAL PURPOSES IS CODIFIED IN SECTION 223 OF THE ACT. THAT SECTION PROHIBITS USE OF INTERSTATE TELEPHONE FACILITIES: 1) TO MAKE AN ABUSIVE, THREATENING, OR HARASSING CALL; 2) FOR MAKING AN OBSCENE, LEWD, LASCIVIOUS, FILTHY OR INDECENT "COMMENT, REQUEST, SUGGESTION OR PROPOSAL"; OR 3) TO MAKE AN OBSCENE OR INDECENT COMMUNICATION FOR COMMERCIAL PURPOSES.

AS YOU ARE NO DOUBT AWARE, THE FCC SOMEWHAT RECENTLY BECAME INVOLVED IN A DILEMMA CONCERNING PRE-RECORDED, SEXUALLY-ORIENTED TELEPHONE MESSAGE SERVICES MORE COMMONLY REFERRED TO AS "DIAL-A-PORN". IN RESPONSE TO THE CONCERNS OF PARENTS AND LEGISLATORS WE EXAMINED EXISTING LAWS TO SEE IF THEY COVERED SUCH ACTIVITIES, BUT DETERMINED THAT ONLY OBSCENE TELEPHONE CALLS IN WHICH THE CALLER WAS THE ONE MAKING THE OBSCENE COMMENT OR SUGGESTION WERE PROHIBITED.

IN RESPONSE TO INCREASED CONCERNS OVER "DIAL-A-PORN" SERVICES, CONGRESS AMENDED § 223 TO PROHIBIT THE USE OF INTERSTATE TELEPHONE SERVICE FOR THE TRANSMISSION OF OBSCENE OR INDECENT MESSAGES FOR COMMERCIAL PURPOSES AND TO ESTABLISH HEAVY PENALTIES FOR SUCH VIOLATIONS. THIS AMENDMENT ALSO DIRECTED THE COMMISSION TO PROMULGATE A REGULATION RESTRICTING MINOR'S ACCESS TO THESE SERVICES, COMPLIANCE WITH WHICH WOULD GIVE THE "DIAL-A-PORN" SERVICE PROVIDER A DEFENSE TO PROSECUTION. WE PROMPTLY DEVISED A REGULATION WHICH RESTRICTED THE HOURS DURING WHICH "DIAL-A-PORN" SERVICES COULD OPERATE. HOWEVER, THE SECOND CIRCUIT SET ASIDE OUR REGULATION AND REMANDED THE PROCEEDING TO SEE IF WE COULD DEVISE AN ALTERNATIVE REGULATION THAT WOULD BE LESS RESTRICTIVE ON ADULT'S ACCESS TO "DIAL-A-PORN" SERVICES, YET CONFORM TO OUR STATUTORY MANDATE. THE SECOND CIRCUIT ALSO DIRECTED THAT WE NOT ATTEMPT TO ENFORCE THIS STATUTE ABSENT PROMULGATION OF A VALID FCC REGULATION.

NOW WE ARE AGAIN CONFRONTED WITH A USE OF TELEPHONE FACILITIES FOR A PURPOSE THAT SIMPLY WAS NOT ENVISIONED BY

CONGRESS AT THE TIME IT ENACTED THE COMMUNICATIONS ACT. WE HAVE ANALYZED THE LANGUAGE OF SECTION 223(a), WHICH MAKES IT A CRIME TO MAKE "ANY COMMENT, REQUEST, SUGGESTION OR PROPOSAL" WHICH IS "OBSCENE, LEWD, LASCIVIOUS, FILTHY, OR INDECENT," TO DETERMINE IF IT CAN BE READ TO COVER THE EXCHANGE OF THE NAMES, ADDRESSES, TELEPHONE NUMBERS AND OTHER DATA CONCERNING THE VICTIMS OF CHILD MOLESTATION.

SECTION 223(a) PROSCRIBES, TO THE EXTENT RELEVANT, THE UTTERANCE OF A COMMENT, REQUEST, SUGGESTION, OR PROPOSAL WHICH IS OBSCENE OR INDECENT. SINCE THE DATA EXCHANGED BY PEDOPHILES IS NOT OBSCENE OR INDECENT ON ITS FACE, WE DO NOT BELIEVE THAT SECTION 223(a) IS APPLICABLE. HOWEVER, TO THE EXTENT ONE PEDOPHILE SOLICITS ANOTHER TO COMMIT A CRIME, SUCH AS KIDNAPPING OR CHILD ABUSE, IT WOULD FALL WITHIN THE AMBIT OF TITLE 18.

WE ALSO DO NOT BELIEVE THAT THE EXCHANGE OF INFORMATION WHICH MAY FACILITATE CRIMES BY PEDOPHILES VIOLATES SECTION 223(b), BECAUSE THE GRAVAMAN OF THE OFFENSE UNDER THAT SECTION IS THE MAKING OF AN OBSCENE OR INDECENT COMMUNICATION TO A MINOR FOR COMMERCIAL PURPOSES. THE COMMUNICATIONS IN QUESTION ARE BETWEEN COMPUTERS OPERATED BY ADULTS ARGUABLY FOR PRIVATE, NON-COMMERCIAL PURPOSES. NOR, AS I BELIEVE THE JUSTICE DEPARTMENT'S CRIMINAL DIVISION HAS OPINED, AND WITH WHOSE OPINION WE ARE IN AGREEMENT, DO THE CRIMINAL LAWS PRESENTLY FORBID THIS TYPE OF ACTIVITY.

IN ESSENCE, THEN, NO PROVISION OF THE COMMUNICATIONS ACT OR OF THE CRIMINAL CODE PRESENTLY MAKES IT ILLEGAL TO TRANSMIT THIS TYPE OF INFORMATION, BY COMPUTER OR OTHERWISE, AT LEAST WHERE NO CRIME IS SOLICITED. WE THEREFORE BELIEVE THAT IF COMMUNICATIONS BETWEEN PEDOPHILES ARE TO BE STEMMED, LEGISLATION MUST BE ENACTED WHICH CLEARLY PROHIBITS INTERSTATE TRANSMISSION OF THIS TYPE OF INFORMATION, BY COMPUTER OR OTHERWISE, AS PART OF TITLE 18 OF THE UNITED STATES CODE.

SENATOR TRIBLE HAS ALREADY DRAFTED LEGISLATION WHICH WOULD AMEND SECTION 1462 OF TITLE 18, TO ESTABLISH CRIMINAL PENALTIES FOR THE TRANSMISSION BY COMPUTER OF MATTER WHICH COULD

BE USED TO FACILITATE THE SEXUAL EXPLOITATION OF CHILDREN OR TO ASSIST IN THE INTERSTATE TRANSPORTATION OF SUCH INFORMATION.

SENATOR TRIBLE'S BILL WOULD AMEND SEVERAL SECTIONS OF TITLE 18. FIRST, SECTION 1462, WHICH PROHIBITS THE IMPORTATION OR INTERSTATE TRANSPORTATION OF OBSCENE AND SIMILAR MATTER, WOULD BE AMENDED TO COVER THE IMPORTATION OR TRANSPORTATION OF SUCH MATTER BY COMPUTER. SECOND, SECTION 2251, WHICH PROHIBITS THE SEXUAL EXPLOITATION OF CHILDREN, WOULD BE AMENDED TO ENSURE THAT THE USE OF COMMON CARRIER FACILITIES TO TRANSMIT DATA TO FACILITATE SUCH EXPLOITATION IS PROHIBITED.

WE BELIEVE THAT SENATOR TRIBLE'S BILL, WITH THE ONE TECHNICAL CHANGE WHICH WE HAVE ALREADY CONVEYED TO THE SENATOR'S STAFF, WOULD EFFECTIVELY REMEDY THE PROBLEM IN ISSUE. EVEN THOUGH SECTION 1462, WHICH RESTRICTS THE CARRIAGE IN INTERSTATE COMMERCE BY EXPRESS COMPANIES OR "OTHER COMMON CARRIER[S]" OF OBSCENE AND SIMILAR MATERIAL, MAY CURRENTLY APPLY TO TELEPHONE FACILITIES, IN ORDER TO AVOID ANY CONFUSION I WOULD SUGGEST THAT THE PREAMBLE TO SECTION 1462 BE AMENDED TO CLARIFY THAT IT APPLIES TO "INTERSTATE COMMUNICATIONS BY MEANS OF WIRE OR RADIO." THAT CHANGE WOULD MAKE IT CLEAR THAT THE USE OF ANY COMMUNICATIONS FACILITIES BY PEDOPHILES TO TRANSMIT PROHIBITED MATERIAL FALLS WITHIN THE AMBIT OF SECTION 1462. MOREOVER, I BELIEVE THE LEGISLATIVE HISTORY OF THIS AMENDMENT SHOULD MAKE CLEAR THAT THE NEWLY ADDED PHRASE "OR INTERSTATE COMMUNICATIONS BY MEANS OF WIRE OR RADIO" INCLUDES ALL MEANS OF INTERSTATE COMMUNICATIONS, WHETHER OR NOT SUCH COMMUNICATIONS ARE LICENSED AS COMMON CARRIER SERVICES, SUCH AS THE NEW FIBER OPTIC AND LASER-LIGHT TECHNOLOGIES. WITH THIS CHANGE, I BELIEVE THAT SENATOR TRIBLE'S PROPOSAL WOULD HELP TO DETER USE OF INTERSTATE COMMUNICATIONS FACILITIES TO FURTHER CRIMES AGAINST CHILDREN.

WHILE AMENDING SECTIONS 1462 AND 2251 OF TITLE 18 IN THE MANNER PROPOSED BY SENATOR TRIBLE WILL PROVIDE THE NECESSARY TOOLS TO COMBAT THE USE OF COMMUNICATIONS FACILITIES TO FURTHER CRIMES BY PEDOPHILES, THE SUBCOMMITTEE SHOULD ALSO CONSIDER

AMENDING THE FEDERAL RACKETEERING STATUTES. FOR EXAMPLE, SECTION 1952 OF TITLE 18, WHICH PROHIBITS THE USE OF ANY FACILITY OF INTERSTATE COMMERCE TO DISTRIBUTE THE PROCEEDS OF UNLAWFUL ACTIVITIES, TO COMMIT A CRIME OF VIOLENCE IN FURTHERANCE OF CERTAIN UNLAWFUL ACTIVITIES, OR TO OTHERWISE PROMOTE SUCH UNLAWFUL ACTIVITIES, COULD BE AMENDED TO INCLUDE PEDOPHILIA AS AN UNLAWFUL ACTIVITY. ALTERNATIVELY, SECTION 1953, WHICH PROHIBITS THE USE OF INTERSTATE COMMERCE TO SEND MATERIALS TO BE USED FOR BOOKMAKING COULD BE AMENDED TO FORBID THE USE OF COMMUNICATIONS FACILITIES TO TRANSMIT MATERIAL WHICH WOULD ENCOURAGE OR FACILITATE CRIMES BY PEDOPHILES.

BECAUSE ALL OF THESE SECTIONS ARE CONTAINED IN TITLE 18 AND ARE CONSEQUENTLY OUTSIDE OUR TRADITIONAL EXPERTISE, I WILL OF COURSE DEFER TO THE JUSTICE DEPARTMENT ON THE QUESTION OF WHETHER AMENDMENT TO THE RACKETEERING PROVISIONS OF TITLE 18 WOULD HAVE ADVANTAGES OVER THE SECTIONS SENATOR TRIBLE'S BILL WOULD AMEND. I MENTION THESE ALTERNATIVES ONLY TO ENSURE THAT THE SUBCOMMITTEE HAS CONSIDERED ALL THE POSSIBILITIES IN DEVELOPING LEGISLATION TO OUTLAW THIS ACTIVITY.

AS YOU ARE AWARE, NEW LEGISLATION TO DEAL WITH THE "DIAL-A-PORN" PROBLEM HAS RECENTLY BEEN INTRODUCED BY SENATOR HELMS. THIS LEGISLATION, KNOWN AS S. 1090, WOULD DELETE SUBSECTION (b)(2) OF SECTION 223 WHICH REGULATES COMMERCIAL "DIAL-A-PORN" OPERATIONS AND PROVIDES A DEFENSE TO THOSE SERVICE PROVIDERS WHO RESTRICT MINOR'S ACCESS TO THEIR SERVICE IN ACCORDANCE WITH AN FCC REGULATION. S. 1090 WOULD PROHIBIT THE TRANSMISSION OF OBSCENE OR INDECENT MATERIAL BY TELEPHONE TO ANYONE, WHETHER ADULT OR CHILD, CONSENTING OR NONCONSENTING, FOR PROFIT OR OTHERWISE.

AS CURRENTLY DRAFTED, S. 1090 WOULD NOT RESTRICT THE USE OF TELEPHONE FACILITIES BY PEDOPHILES TO FURTHER CRIMINAL ACTIVITIES, FOR IT DOES NOT APPLY TO THE TRANSMISSION OF MATERIAL THAT IS NOT OBSCENE OR INDECENT, PER SE; TO WIT, THE NAMES, ADDRESSES AND DESCRIPTIONS OF VICTIMS OF CHILD MOLESTATION.

ALSO, THIS PROPOSAL MAY HAVE CERTAIN CONSTITUTIONAL PROBLEMS WHICH SHOULD BE CAREFULLY CONSIDERED. FOR EXAMPLE, IT IS NOT CLEAR THAT MATERIAL THAT IS INDECENT, LEWD OR LASCIVIOUS MAY BE COMPLETELY BANNED, ESPECIALLY IF EXCHANGED BETWEEN CONSENTING ADULTS WHERE THE MATERIAL WILL NOT BE USED FOR CRIMINAL ACTIVITIES. THESE CONCERNS WERE DISCUSSED IN THE LEGISLATIVE HISTORY TO THE 1983 AMENDMENTS TO § 223, BUT IN VIEW OF THE SECOND CIRCUIT'S DECISION IN CARLIN COMMUNICATIONS V. FCC, 749 F. 2d 113 (2d Cir. 1984), MAY NEED TO BE RECONSIDERED. I MENTION S. 1090 TO SUGGEST THAT YOU MAY WISH TO CONSIDER IT IN DEVELOPING A COMPREHENSIVE SOLUTION TO THE PROBLEMS PRESENTED BY THE USE OF COMMUNICATIONS FACILITIES FOR SEXUALLY EXPLOITIVE PURPOSES INVOLVING MINORS. THE CURRENT PATCHWORK OF STATUTES WHICH GOVERN THE USE OF COMMUNICATIONS FACILITIES FOR ILLEGAL USES IS SOMEWHAT INCONSISTENT AND ANTIQUATED, AND THERE ARE, I THINK, CERTAIN ADVANTAGES TO BE GAINED BY ADDRESSING ALL ILLEGAL USES OF COMMUNICATIONS FACILITIES TOGETHER.

WE AT THE FCC WILL BE PLEASED TO PROVIDE ANY ASSISTANCE NECESSARY TO ENSURE THE EXPEDITIOUS PASSAGE OF LEGISLATION WHICH WILL PREVENT USE OF COMMUNICATIONS FACILITIES WHETHER TO FACILITATE CRIMES AGAINST CHILDREN OR FOR OTHER ILLEGAL PURPOSES.

THANK YOU FOR THIS OPPORTUNITY TO PRESENT THE VIEWS OF THE FCC ON THIS MATTER. I WILL BE HAPPY TO ANSWER ANY QUESTIONS THE SUBCOMMITTEE MAY HAVE CONCERNING MY TESTIMONY.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

July 19, 1985

IN REPLY REFER TO

Honorable Strom Thurmond
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Thurmond:

Your letter of June 21, 1985 to Chairman Fowler requesting the Commission's views on S. 1305, the "Computer Pornography and Child Exploitation Prevention Act of 1985," has been referred to me for response.

Briefly summarized, S. 1305 is designed to eliminate use of interstate telecommunications facilities for the transmission of material relating to the sexual exploitation of children. Toward this end, S. 1305: 1) expands the application of 18 U.S.C. § 1462, which prohibits the importation or interstate transportation of obscene matter, to include a prohibition against the importation or transportation of such matter by computer; and 2) expands the application of 18 U.S.C. §§ 2251 and 2252, which prohibit the sexual exploitation of children, to include a prohibition against the transmission, by computer or otherwise, of data to facilitate such exploitation.

As explained in my testimony before the Subcommittee on Security and Terrorism on June 11, 1985, we believe that it is appropriate for Congress to consider measures to deter the transmission of information over interstate telephone lines which facilitates sexual crimes against minors, and we believe that S. 1305 will, subject to several changes to be discussed in detail below, help to curtail use of telecommunications facilities for such purposes.

18 U.S.C. § 1462 currently restricts the use of interstate commerce facilities by express companies or "other common carrier[s]" for the transmission of obscene and similar material. To avoid any confusion, we suggest that S. 1305 make clear that this provision also encompasses the use of interstate telecommunications facilities. This could be accomplished by amending the preamble to § 1462 to clarify that it applies to "interstate communications by means of wire or radio." In this same vein, we believe that the legislative history of S. 1305 should specify that the amendment applies to all means of interstate telecommunications, whether or not such communications are transmitted by wire, radio or by means employing the new fiber optic and laser light technologies.

We believe that it may also be useful for the Committee to consider this measure in tandem with S. 1090, the "Cable-Porn and Dial-a-Porn Control Act." S. 1090, would delete 47 U.S.C. § 223(b)(2)(1983) which regulates commercial "dial-a-porn" operations and provides a defense to those service providers who restrict minor's access to their service in accordance with an FCC regulation. S. 1090 would also prohibit the transmission of obscene or indecent material by telephone to anyone, whether adult or child, consenting or nonconsenting, for profit or otherwise. Significantly, this measure would not restrict the use of telephone facilities by pedophiles in furtherance of their criminal activities against children, for it does not apply to the transmission of material that is not obscene or indecent, per se; to wit, the names, addresses and descriptions of victims of child molestation. Joint consideration of S. 1305 and S. 1090 would ensure a comprehensive solution to the problem of how to protect children by preventing use of interstate telecommunications facilities for the transmission, transportation or distribution of

pornographic material. The current patchwork of statutes which govern the use of telecommunications facilities for illegal purposes is somewhat inconsistent and antiquated, and there are certain advantages to be gained by the Committee's addressing all illegal uses of telecommunications facilities together.

While the amendments proposed by S. 1305 will probably curb the problems it is intended to address, we believe the Committee should also consider whether there are advantages to amending the federal racketeering statutes. For example, 18 U.S.C. 1952, which prohibits the use of any facility of interstate commerce to distribute the proceeds of unlawful activities, to commit a crime of violence in furtherance of certain unlawful activities, or to otherwise promote certain unlawful activities, could be amended to include crimes by pedophiles as unlawful activities. Alternatively, 18 U.S.C. § 1953, which prohibits the use of interstate commerce to send materials to be used for bookmaking, could be amended to forbid the use of telecommunications facilities to transmit material which would encourage or facilitate crimes by pedophiles. As these statutes are outside our traditional purview, we express no opinion as to whether they would more effectively combat the use of telephone facilities to commit crimes against minors than would the amendments proposed by S. 1305.

With the changes described above, we believe that S. 1305 will help deter the use of telecommunications facilities to further sexual crimes against children. No matter which legislative course you choose to pursue, you should give serious attention to the First Amendment concerns which may be raised. For example, you must be prepared to confront arguments that the transmission of information such as the names and addresses of child victims or potential victims is not itself obscene or indecent and therefore cannot be prohibited consistent with the First Amendment. The ban would appear sustainable, however, to the extent the transmissions are connected to illegal activities. These concerns were discussed in the legislative history to the 1983 Amendments to § 223, but in view of the Second Circuit's Decision in Carlin Communications v. FCC, 749 F. 2d 113 (2d Cir. 1984), may need to be reconsidered.

We appreciate the opportunity to present our views on this important matter and will be delighted to provide you with any further assistance you might require with respect to this legislative initiative.

Sincerely yours,

Jack D. Smith
General Counsel

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

August 2, 1985

IN REPLY REFER TO

Honorable Jeremiah Denton
Chairman, Subcommittee on
Security and Terrorism
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Denton:

This is in response to your letter of June 21, 1985, which asks four questions as a follow up to my testimony before your Subcommittee on June 11, 1985, concerning S. 1305, the "Computer Pornography and Child Exploitation Prevention Act of 1985." This legislative proposal seeks to prevent "the exchange, among pedophiles, of information relating to their victims by the way of computer networks that utilize interstate telephones."

I. "Does the fact that in 47 U.S.C. section 223(A), the words 'obscene, lewd, lascivious, filthy, or indecent' are written in the disjunctive, imply that each has a separate meaning?"

While we believe that Congress intended each word to have a separate meaning, recent cases have cast considerable doubt on whether this Congressional intent can constitutionally be effectuated. As the Supreme Court stated in United States v. 12, 200-Ft. Reels of Super 8 mm. Film, 413 U.S. 123, 130 at n. 7 (1973):

> If . . . a serious doubt is raised as to the vagueness of the words obscene, lewd, lascivious, filthy, indecent, or immoral . . . we are prepared to construe such terms as limiting regulated material to patently offensive representations or descriptions of that specific 'hard core' sexual conduct given as examples in Miller v. California . . . Of course, Congress could always define other specific 'hard core' conduct.

In Hamling v. United States, 418 U.S. 87, 114 (1974), the Supreme Court similarly construed the terms "obscene, lewd, lascivious, indecent, filthy or vile" to "be limited to the sort of patently offensive representations or descriptions of specific 'hard core' sexual conduct." Accordingly, it is not clear that the courts will give effect to each term following "obscene."

While the Court did view indecent speech as having a different meaning from obscene speech in the broadcast context, it based its holding on the "pervasive presence" of broadcasting in American lives and "unique accessibility" to children. See FCC v. Pacifica Foundation, 438 U.S. 726 (1978). 1/ The Court

1/ While the distinctions between obscene and indecent speech are not entirely clear, obscene speech is speech which: 1) taken as a whole appeals to the prurient interest in sex; 2) portrays sexual conduct in a patently offensive way, and 3) taken as a whole has no serious literary, artistic or scientific value. See Miller v. California, 413 U.S. 15, 24 (1973). On the other hand, indecent speech need not appeal to the prurient interest and may have redeeming social value. See FCC v. Pacifica Foundation, supra at 744.

cautioned that Pacifica represents a "very narrow decision," in that it did not involve for example, a two-way radio conversation between a cab driver and a dispatcher . . . or closed circuit transmissions." 2/ Nor did the Court rule out the possibility that indecent transmissions could not be prohibited during periods when the audience would not likely be comprised of children. 3/ Recently, the United States Court of Appeals for the Eleventh Circuit 4/ also viewed indecent speech as having a meaning different from obscene speech, but struck down a Miami city ordinance insofar as it regulated the transmission of indecent material via cable television.

In view of the hostile attitude toward restriction of indecent speech displayed by the courts, it appears highly questionable whether a law restricting indecent speech on a service which requires individuals to intentionally access the information, such as the telephone, would be upheld. 5/

In this connnection, you should also be aware that 47 U.S.C. § 223(b), which provides a defense to prosecution to those who restrict minors' access to obscene or indecent message services in compliance with an FCC regulation, was challenged in the United States Court of Appeals for the Second Circuit, inter alia, on constitutional grounds. 6/ Since the Second Circuit remanded the FCC's regulation for further consideration without reaching the constitutionality of § 223(b), questions as to the view of that Court as to the extent to which Congress may regulate offensive telephone communications are yet to be resolved.

Thus, although Congress clearly intended the words describing prohibited activity in §223(a) to have separate meaning, we have grave doubts as to whether such construction of this statutory language is still valid in light of subsequent Supreme Court decisions.

II. "In F.C.C. v. Pacifica Foundation, the United States Supreme Court discusses the concept of indecency, and stated that the 'normal definition of 'indecent' merely refers to nonconformance with accepted standards of morality.' The United States Supreme Court also stated in the Pacifica case that indecency is largely a function of context, and that when the regulation of indecency is at stake, it cannot be judged in the abstract, but must be judged in a specific factual context. In the specific factual context before us, it is understood by all that the exchange of names, addresses, and telephone numbers by pedophiles using computer telephone hook-up, communicates more information than the mere 'name, address, and telephone number' of a child. Both the sender and the receiver of the information understand that the exchange represents a record of actual or potential targets for illegal sexual gratification, and is meant to and does

2/ 438 U.S. at 750.

3/ Id. at note 28.

4/ See Cruz v. Ferre, 755 F. 2d 1415 (11th Cir. 1985).

5/ Phone conversations have been viewed to be private matters and thus safeguarded by the Fourth Amendment. See Katz v. United States, 389 U.S. 347 (1967); Berger v. New York, 388 U.S. 41 (1967); see also 18 U.S.C. §§ 2510-2520 (one of the purposes of the laws on interception of wire and oral communications is to protect the privacy of conversations and to protect unlawful invasions of privacy).

6/ See Carlin Communications Inc., v. FCC, 749 F. 2d 113 (2d. Cir. 1984).

support the continued activity of illegal sexual molestation of children. In this specific and limited context, why isn't the collection and transmission of this communication, from pedophile to pedophile, an 'indecent' or 'lewd' interchange of comments, coming within the proscriptions of current federal law?"

Arguments could be made that the transmission of this kind of information should be categorized as indecent or lewd under the law because it furthers illegal activities. However, the courts have generally focused upon the language contained in a communication, rather than the use to which the information is put, to find obscenity or indecency. Since the courts are inherently suspicious about restrictions upon speech, we are skeptical about the chances of new theories surviving judicial review.

It seems to us that the most effective way to stem communications designed to further activities of pedophiles is to outlaw them directly, rather than to risk the uncertainties attendant to labelling them indecent or lewd. To the extent that such communication furthers unlawful activities, such as facilitating violations of 18 U.S.C. §§ 2251-2253 which prohibit child pornography and sexual abuse, those who transmit such information should be prosecuted for aiding and abetting a crime. Therefore, we think the portions of S. 1305 which directly make such communication a crime will prove more efficacious than attempting to stop the communications on grounds that they are lewd or indecent.

III. **"Where communications between pedophiles consist of more than the names, addresses and telephone numbers of children, as for example, where they consist of descriptions of, or which imply, sexual activity between adults and children, why shouldn't these communications be regarded at the very least, as 'lewd' or 'indecent', coming within the proscription of current federal law?"**

To the extent that such transmissions describe the activities of pedophiles in such a way that the descriptions themselves are indecent, then such information might arguably fall within the meaning of 47 U.S.C. § 223. However, even if we got beyond this point, § 223 is worded in such a way that a defendant would have good arguments that the statute was drafted only to protect people from indecent language, and it did not cover computer to computer communications. Under § 223(a)(1)(A), indecent comments, requests, suggestions or proposals are prohibited, but transmissions between computers may not be considered to be comments within the meaning of this subsection. Section 223(b) clearly is inapplicable since the gravaman of the offense thereunder is the making of an obscene or indecent communication to a minor.

IV. **" In U.S. v. Southwestern Cable Co., 392 U.S. 157 (1968), the United States Supreme Court examined the legislative history of the Federal Communications Act, which indicates that the F.C.C. has been given regulatory power over all forms of interstate electrical communication. Underlying the whole Communications Act is the recognition of the rapidly fluctuating factors characteristic of the evolution of communication channels, and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors. In view of this comprehensive mandate from Congress, and the F.C.C.'s broad regulatory authority over all interstate communication by wire or radio, is it within the F.C.C.'s regulatory power to independently take measures to prevent the use of computers linked by telephone lines from being used to transmit material which contributes to and furthers crimes**

involving child molestation or child pornography, or is new legislation from Congress necessary to adequately deal with this problem?"

It is true that the FCC has broad powers to regulate interstate communications. Thus, it could be argued that we do have authority to adopt rules to stem communications between pedophiles as violative of the public interest. The primary weaknesses here are: (1) it could be argued that § 223 of the Communications Act establishes the bounds of the agency's power to restrict phone calls, and we should not exceed those bounds without appropriate legislation; (2) the Commission lacks both the expertise and the resources to detect possible violations and to ascertain whether the communications are illegal; and (3) to allow the Commission or the telephone companies to police telephone transmissions smacks of improper intrusion into privacy and censorship. Because of these concerns it does not appear that the FCC can be effective in stemming these kinds of communications.

Therefore, if Congress believes there is a need for federal action to curtail communications between pedophiles, we think legislation is necessary. Furthermore, we believe that if such legislation is to be effective, authority to implement it should be placed with the Department of Justice, which has the general authority to enforce our criminal laws.

We appreciate the opportunity to present our views on this important matter and trust the foregoing is fully responsive to your inquiry. We will be available to provide you with any further assistance you might require.

Sincerely yours,

Jack D. Smith
General Counsel

Senator DENTON. Thank you, Mr. Smith.

My questions solicit legal opinions, which would best be answered in writing. I will, therefore, submit them to you in writing for your written response. And as chairman I would ask that the FCC submit executive comment on Senator Trible's bill.

Mr. SMITH. Yes, sir.

Senator DENTON. Senator Trible.

Senator TRIBLE. Mr. Smith, I thank you for your testimony and I thank you for your support of the measure that I have introduced. I look forward to working with you and your able staff to enact that legislation.

We will push forward for Senate action so that we can give you and the Department of Justice the kind of tools that are necessary to combat this ever expanding problem of child pornography and child molestation.

I thank you.

Mr. SMITH. Thank you very much, sir.

Senator DENTON. And before we adjourn, I want to thank you too, Mr. Smith, and ask that in addition to the comment on Senator Trible's bill, that the FCC submit an executive comment on S. 1090, Senator Helms' bill.

Thank you very much, Mr. Smith.

Thank you, ladies and gentlemen. The hearing is adjourned.

[The subcommittee adjourned at 11:25 a.m.]

○